THE

MAGISTRATES' MANUAL:

BEING A COMPILATION OF THE LAW

RELATING TO THE

DUTIES OF JUSTICES OF THE PEACE

IN UPPER CANADA;

WITH A

COMPLETE SET OF FORMS AND A COPIOUS INDEX.

BY JOHN McNAB,

BARRISTER-AT-LAW, ETC.

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TO THE

JUSTICES OF THE PEACE IN UPPER CANADA,

THIS WORK

IS

RESPECTFULLY DEDICATED

BY

THE AUTHOR.

PREFACE.

In preparing this work for publication, the author has constantly kept in view the wants of the magistracy. His experience as crown attorney and clerk of the peace has shown him the necessity of some such publication; and during its preparation he has received encouragement from many of the ablest Justices of the province, who have constantly assured him, that the "Magistrate's Manual" would supply a want but too deeply felt by all earnest in the performance of magisterial duties. It is due to the public, to state here, that the delay in publication was principally owing to the addition of about two hundred pages more than the book was originally intended to contain.

Hitherto much of the law relating to offences, of which magistrates were cognizant, has not been collected into any convenient form, but had to be sought out by reference to many volumes. This process was always tedious, and not unfrequently unsatisfactory. And further, the law relating to particular offences, is sometimes to be found in fragmentary portions connected with various subjects, thus rendering the search very difficult. To bring the law within easy reach of all, the author has endeavoured to collect the law relating to each offence under its proper caption. All changes in the law since the consolidation of the Statutes, have been inserted in this work, and the course of legislation has been carefully followed up to the present time. In the Addenda will be found the Act for the Preservation of the Peace, on the frontier,

passed during the last session; as well as the Foreign Enlistment Act, and an elaborate judgment in a case arising out of it of his Lordship Chief Justice Draper, which, in consequence of its importance, has been inserted at full length.

The author would express the hope, that the dissertation on evidence, also inserted in the Addenda, may be found of some service in enabling magistrates to further the ends of public justice.

A complete set of forms has been added, supplying almost every requirement of a Justice. Many of these forms may be found in the statutes, some have to be sought in the more elaborate works on magisterial duties published in England, and others have been framed by the author to meet the peculiarities of certain cases or enactments.

The necessity for a very full index, for the use of unprofessional readers, has been deeply felt by all who have performed magisterial duties. This want has, time after time, been brought under the author's notice, in his official capacity; and he has, in some measure, endeavoured in this publication to respond to the reiterated demand. No exertion has been spared to make the index as complete as possible; and, by indexing almost every point of importance under various heads, the author hopes to have rendered the discovery of the law on any point, within the scope of the work, comparatively easy.

In committing his work to the public, the author would express a hope, that his efforts may meet with the approval of the profession, and the magistrates, and contribute in some degree to the better administration of public justice in Upper Canada.

TORONTO, 31st May, 1865.

MAGISTRATE'S MANUAL.

OF THE OFFICE OF A JUSTICE OF THE PEACE.

The office of Justice of the Peace was originally created by Edward III., A. D. 1327, and the first statutory provision to be found relating to the duties connected therewith, was made in the first year of the reign of that King; when it was ordained that Justices of the Peace should be assigned by the King's Commission.

Meaning of "Justice of the Peace."—Justices of the Peace are defined by the learned *Dalton*, to be "Judges of Record, "appointed by the King to be Justices within certain limits, "for the conservation of the peace, and for the execution of "divers things comprehended within their commission, and "within divers Statutes committed to their charge."

Justices of the Peace may be divided into two classes, namely, those appointed by commission, and those who are such for the time being, merely by virtue of holding some other office, as Mayors and Aldermen of cities and Reeves and Deputy-reeves of townships.

The power and duties of a Justice of the Peace *depend* on his *commission*, and on the several *statutes* which have created objects of his jurisdiction. His commission empowers him singly to conserve the peace; and thereby gives him all the powers of the ancient conservators at the common law, to suppress riots and affrays, to take securities for the peace, to commit felons and other inferior criminals. It also empowers any two or more of them to hear and determine felonies and misdemeanors, which is the ground of their jurisdiction at sessions.

The power and duties, given to one or more Justices by the statutes, are so numerous and responsible, that much time, care, and attention are required from the Justice who desires legally and carefully to perform the duties imposed upon him.

The Justice of the Peace must look to these statutes for direction and guidance. He must remember that the power given to him summarily to convict, is in restraint of the common law, and to a certain extent a tacit repeal of that famous clause in the Great Charter, that a man shall be tried by his equals. The danger is great, if a Justice act on the erroneous idea so often embodied in the popular expression, that he should decide according to conscience. If this mean in strict accordance with written law, it would be correct, but if only in harmony with his own views and impressions of right and wrong, very erroneous. A rigid adherence to the statute law, is the surest safeguard to a Justice of the Peace, protecting him from the liability of too often vexatious actions, and the public from wrong and illegality.

So numerous, however, are the duties imposed on County Magistrates, so arduous and responsible in many cases have they become, that in addition to this, education, ability, and matured habits of business are necessary for their proper and efficient discharge. These remarks apply more particularly to summary proceedings before Justices. The *Law Journal*, for December, 1863, in an article, though written in too condemnatory a spirit, contains many truths worthy of attentive consideration; at the same time, the remedies proposed, with the exception of the first, would be of very doubtful advantage. We quote the article in part, as follows:

"Our attention has been directed to the very imperfect state of the law in reference to procedure before Magistrates, in cases in which they are authorized to convict summarily.

"No branch of criminal administration is more frequently brought into operation than this; and the very extensive powers committed to magistrates are little understood and very seldom exercised in the manner required by law. Occasionally cases are reported in the superior courts exhibiting this fact; but a vast number come before the Quarter Sessions, in the

form of appeals from the convictions of Justices, and in nearly every case, the convictions are found to be insufficient in form or in substance, and are accordingly quashed. In some instances, this arises from ignorance or carelessness of the convicting Justice; but in the great majority of cases the fault does not lie at the door of the magistrates, but in the system under which he is authorized to act.

"The magistracy are increasing in number, and the mischiefs we allude to increase in at least the same ratio. It is a great evil when offenders are allowed to escape by reason of informality in the proceedings to convict them, and the constant recurrence of this evil is calculated to weaken the force, if not of all laws, at least of those for the prevention and punishment of small crimes and misdemeanors. A notorious offender, a willful Sabbath breaker, or one who violates the wholesome restrictions on innkeepers, for example, is charged with the offence before a magistrate. He is summoned, appears, and the evidence taken bringing the charge home to him, is convicted of the offence, and a fine imposed upon him. The magistrate, from some cause, fails to put the conviction in legal form. The defendant appeals to the Quarter Sessions, and the conviction is quashed. Surely this is calculated to encourage opposition to authority, and to foster crime; and yet these things may occur without much fault on the part of the convicting Justice. True, it may be urged that men should not be appointed to an office, the duties of which they are not fitted by education to perform; but if that rule were acted on in the present state of the law, not two magistrates in each County in Upper Canada would be found equal to their work.

"Attempts have been made, by enactments, from time to time, to simplify procedure, and it was partially done up to a certain period; but there never has been any *general* law of procedure governing all cases of summary conviction, and no full set of forms has ever been given by the legislature, applicable to the various cases within the magistrates' jurisdiction. If it be said that a treatise on the duties of magistrates would remedy the evil, our reply is at best it would only do so in part, for few who have not been regularly trained can apply

general rules and principles (which only could be given), laid down in a text-book, to particular cases, if at all complex in their nature.

"Any one who has taken the trouble to examine the convictions returned by magistrates, will bear us out in the assertion, that in nine of every ten special cases, the convictions are bad, void, or voidable for some defect. Magistrates should not exercise their office in peril of actions against them at every step, nor be feeble as ministers of justice, because imperfectly informed as to the nature and limits of their powers and the mode in which their judgments are to be rendered effective."

It must be remembered that the mere fact of the name of any gentleman being in any commission, will not authorize him to act as a Justice of the Peace, until he has duly qualified on real estate of the clear value of twelve hundred dollars, and also taken the oaths of office, allegiance, and qualification. Any person acting in the capacity of a Justice of the Peace not having qualified, or not possessing the proper qualification, shall for every such offence forfeit and pay the sum of one hundred dollars. (Con. Stat. C. c. 100, s. 6).

A Justice of the Peace has authority, in the first instance, over all offences against the law, from the highest felony to the most trifling misdemeanor; and it is his duty to take cognizance of all such offences committed within his jurisdiction.

The acts of a Justice of the Peace are either *ministerial* or *judicial*. He acts ministerially, in preserving the peace, receiving complaints against persons charged with indictable offences, issuing summonses or warrants thereon, examining the informant and his witnesses, binding over the parties to prosecute and give evidence, bailing the supposed offender, or committing him for trial. He acts *judicially*, in all cases of summary jurisdiction. His conviction, drawn up in due form, and unappealed against, is conclusive, and cannot be disputed by action; though if he act illegally, maliciously, or corruptly, he is punishable by information or indictment.

All offences cognizable by a Justice of the Peace are divisible into two general classes, namely: firstly, those which the law requires to be sent to a *higher tribunal* for final trial, wherein

he acts *ministerially;* and, secondly, those over which the law gives the Justice summary jurisdiction, wherein he acts *judicially.*

Before we proceed to the consideration of offences generally, it may be found useful to give a short and connected outline of the ordinary practice of a magistrate's court. For this we must mainly consult Con. Stat. C. c. 102, for the duties of Justices in relation to persons charged with indictable offences, and Con. Stat. C. c. 103, for the duties of Justices in relation to summary convictions, which statutes we shall hereafter analyse under the titles, "Judicial Duties of Justices" and "Ministerial Duties of Justices."

PROCEDURE OF A MAGISTRATE'S COURT.

In all cases the first official step to be taken by the Justice is to receive an information or complaint in writing and upon oath generally, from a credible person, that an offence has been committed within his jurisdiction, such information or complaint stating as near as may be the *name of the offender* (if known), the *nature of the offence*, the *person against whom*, and the *time when*, and the *place where* the said offence was perpetrated. (For forms, see article "Information.")

Upon receiving this information, the Justice should refer to the statute or by-law creating the offence, as to the mode of procedure; and if it is one over which he has summary jurisdiction, whether the complaint is made within the time prescribed by such statute or by-law; and if no time is limited, must be guided by Con. Stat. C. c. 99, s. 124, and Con. Stat. C. c. 103, s. 26, which direct that the prosecution of offences shall be commenced *within three months* after the *commission* of the offence.

It is recommended that the Justice should, on all occasions, when taking informations, carefully read over and explain

them to the informants, so as to satisfy himself that they are perfectly understood; because it not unfrequently happens that ignorant persons undesignedly mis-state and confuse the facts, so as to mislead the Justice, and cause the information to be incorrectly prepared.

Upon receiving this information or complaint on oath (Con. Stat. C. c. 103, s. 24), and in writing (Con. Stat. C. c. 103, s. 20), signed by complainant or informant, and the offence described as near as may be in the words of the statute creating the offence, and the oath administered after this form, he holding the Holy Evangelists in his right hand, the Justice shall repeat to him, "You swear that the contents of this your informa-"tion (or complaint) are true, so help you God." The party then kisses the Testament, and the oath is complete. Or, if the party conscientiously object to an oath, may affirm after this form: "You solemnly affirm and declare that "the contents of this your information (or complaint) are "true."

ANTERIOR PROCEEDINGS IN THE SAME MATTER.—With reference to proceedings before Justices under their summary jurisdiction, it is necessary to observe that a judgment of a court of concurrent jurisdiction, directly upon the point, is conclusive between the same parties, upon the same matter directly in question in another court. When, therefore, a servant in husbandry who had been discharged by her master before the proper time, sued in the County Court for wrongfully discharging her without reasonable cause, whereupon judgment was given for the defendant; and she afterwards, at the expiration of her quarter, took out a summons before Justices, to recover her quarter's wages, the same question arising, upon a case stated, it was held that the decision of the County Court was a bar to such proceeding. The rule of law, as stated by *De Grey*, C. J., *Duchess of Kingston's Case*, is, that "The "judgment of a court of concurrent jurisdiction directly upon "the point is, as a plea, a bar, or as evidence, conclusive "between the same parties upon the same matter directly in "question in another court."

If it appear to the Justice, that the offence was committed within his jurisdiction, and that the application is made in due time, he should at once issue his summons or warrant to bring the accused before him, describing the offence in such summons or warrant, from the information or complaint sworn to. If a summons be issued, reasonable time should be given the defendant to appear; if a warrant be issued, it must be executed forthwith. A summons should be issued in all cases over which the law gives a Justice summary jurisdiction, in the first place, unless some good and sufficient reason should exist for issuing a warrant. In all cases of felony, and in most indictable misdemeanors, a warrant, and not a summons, should be granted in the first instance. Warrants for felony, or breach of the peace, and search warrants, may be granted and executed on Sunday, or any other day or night.

A summons may be served personally or by leaving it with some person for him to whom it is directed, at his last or most usual place of abode. (Con. Stat. C. c. 103, s. 2).

If the defendant do not appear in obedience to the summons, and it appear by oath or affirmation that such summons was duly served, the Justice may proceed in defendant's absence, or, if he think fit, may issue a warrant for his apprehension. (Con. Stat. C. c. 103, ss. 6 & 7).

If the person against whom a warrant be issued, reside out of the jurisdiction of the Justice, it must be "backed," as it is termed (Con. Stat. C. c. 103, s. 11). (For forms of endorsement see article "Backing Warrant.")

Hearing Case.—We will now suppose the complainant and the defendant to be in attendance with their witnesses on the day when, and at the place where, it was appointed to hold the court. If the offence complained of be one over which the Justice or Justices has or have summary jurisdiction, the court is an open one, to which the public have the right of access.

It is a very objectionable practice, but scarcely avoidable in many places in Canada, for the county magistracy to hold their courts in a room in a hotel or tavern. It necessarily happens that parties are often kept waiting until their case is called on,

and too many are tempted to amuse themselves at the bar, and not unfrequently appear before the bench under the influence of liquor, thus inadvertently brought upon them.

The court having been opened by the constable announcing such opening, and calling for order, the names of the parties should then be called, and the information or complaint read to the accused by the Justice, and in cases of summary jurisdiction, the question asked, if he admit the truth of the complaint, or, if he have any cause to shew why he should not be convicted, or why an order should not be made against him, *as the case may be* (Con. Stat. C. c. 103, s. 37). If he voluntarily admit it, and offer no defence, the court has only to consider the amount of punishment to be inflicted (Con. Stat. C. c. 103, s. 38). It is always desirable to take the defendant's admission in writing, and signed by him if he will. If the offence be not admitted, the Justice must proceed to take the evidence of the complainant and his witnesses, and afterwards that of the witnesses for the defendant, having first sworn them on the Holy Evangelists. In this form, the party deposing taking the Testament in his right hand, the Justice shall repeat, "The "evidence you shall give, shall be the truth, the whole truth, "and nothing but the truth. So help you God." The party then kissing the book, the oath is complete, and evidence may then be given, taking the whole down in writing as near as may be in the words of the witnesses; the evidence of each to be signed by him, as also by the Justice or presiding Justice. Before the witness signs the evidence he has given, it should be read over to him, to ascertain whether it has been correctly taken down, or that his right meaning has been expressed: any mistake should be corrected before he signs it. It must be remembered that the defendant cannot be examined as a witness for the complainant, or on his own behalf, in any criminal proceeding, which term seems to extend to all cases in which he is liable to be punished by fine or imprisonment; and the same disability attaches to the wife of the defendant. If the Justice should see any good cause for so doing, he may adjourn the hearing of the case to some future day, and in the

meantime commit the defendant to the common gaol, or may discharge him, upon his entering into a recognizance, with or without sureties, for his appearance at the time appointed (Con. Stat. C. c. 103, ss. 22 & 46). Persons charged with indictable offences may be remanded by warrant from time to time for any period not exceeding eight days at any one time, or he may be verbally remanded for any time not exceeding three clear days. (Con. Stat. C. c. 102, ss. 42 & 43).

If any witness neglect or refuse to attend, and proof on oath having been made of the service of the summons, a warrant may issue, to bring and have such person before the court (Con. Stat. C. c. 103, s. 17). Indeed, if the Justice be satisfied by evidence upon oath, that it is probable that the witness will not attend, unless compelled so to do, a warrant may be issued for a witness in the first place (Con. Stat. C. c. 103, s. 18); and a witness refusing to be examined on oath or affirmation, or refusing to answer such questions as may be put to him touching the matter in question, without offering any just excuse for such refusal, may be committed to gaol for any time not exceeding ten days, unless in the mean time he consent to be examined (Con. Stat. C. c. 103, s. 19). In many cases, particularly in indictable offences, it is desirable for the Justice to order the witnesses on both sides to leave the court; but it is important to observe, that if any witness should remain in court, notwithstanding any such order, his evidence cannot be safely refused.

It must be remembered that in all cases of *summary conviction*, the *accused* is admitted to make full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney; but in indictable offences, the statutes do not give the accused the same privilege. (Con. Stat. C. c. 103, s. 30; c. 102, s. 30).

Indictable Offences.—After the first examination of witnesses, they may be cross-examined by the prisoner; and when their evidence is completed, their depositions are to be read by the Justice to the accused; and then any statement he may make, after being duly cautioned, as directed in Con. Stat. C.

c. 102, ss. 32 & 34, is to be taken down in writing as nearly as possible in his own words, signed by him, if he will, as well as by the acting Justice or Justices. (The form, as given by the statute, will be found under article "Statement of the Accused.")

JUSTICE'S SIGNATURE TO DEPOSITIONS.—It is requisite that the Justice should affix his signature to the deposition of each witness, in the following or similar form:

"Sworn before me at —— the —— day of —— A.D. 18—
A—— B——, *J. P.*"

The Justice or Justices having heard the evidence on both sides, the first question to determine is, whether the charge is sustained by the evidence; or, in indictable offences, although the offence may not be clearly proved, whether there is sufficient doubt to send the case to another tribunal; or the case may be adjourned for further hearing. If the case can be disposed of summarily, the Justice or Justices will adjudge the amount of the penalty to be imposed, under the limitations of the statutes creating the offence, together with the costs, which should be recorded on the proceedings, together with the period of imprisonment, with or without hard labour, to be awarded in case of non-payment of fine and costs; a minute of which should be served on the defendant, if he have to pay money, for which no fee should be paid; before which service no warrant of distress or commitment shall be issued (Con. Stat. C. c. 103, s. 52). (For minute, see article "Minute of Conviction.")

MAJORITY SHOULD DECIDE.—If more than one Justice be acting, the judgment should be according to the opinion of the majority. The chairman or presiding Justice may vote, but he is not entitled to a double or casting vote. If the Justices are equally divided in opinion, there should be no adjudication, but the Justices should adjourn the case to a future day, and then entirely rehear the case, when other magistrates may be present, or further evidence adduced. If no adjudication be made, nor the case postponed, the information may be laid again, if the time for doing so has not expired, and the

proceedings be wholly recommenced. If the judgment be given, it may be altered during the same sitting, but not afterwards. Two or more Justices may lawfully do whatever any one Justice may do alone.

INTERFERENCE OF JUSTICES WITH EACH OTHER. — Although, as a general rule, it is advisable that more than one Justice should hear and determine all cases, as it not only divides the responsibility, but strengthens the public impression that the administration of justice is impartial and beyond suspicion; at the same time—although, it is to be hoped, of rare occurrence—cases have occurred, where the Justice who issued the summons and those who took part at the hearing acted more like advocates than judges, and satisfied the parties present that partisan feelings were more likely to rule the judgment, than the calm, unbiassed opinion of the judge.

HARD LABOUR.—The statute under which a conviction is made must, in default of payment of penalty or damage, expressly authorize the addition of hard labour to the imprisonment, otherwise the convicting Justice has no authority to impose hard labour; and if he does so without such authority, the conviction is bad. And in offences for which hard labour may be given, the commitment need not expressly negative the hard labour, it being presumed that it is not ordered unless stated.

PUNISHMENT.—With respect to the punishment to be awarded in the event of conviction, it may be observed that the penalty or imprisonment ought in all cases to be proportionate to the nature and extent of the offence, and the circumstances of the offender; and where offences of any particular description are very prevalent, or on the increase, a more than ordinary degree of severity may become necessary. Justices should always bear in mind that the great object of penal legislation is not alone the reform of the criminal (desirable as this object may be), but also to deter others from the commission of crime. The punishment should not be so severe as to enlist the sympathy of the public on the side of the offender; nor, on the other hand, should it be so slight and injudiciously mild as to give just ground of

complaint, that either private individuals, or public officers acting in the execution of a public duty are not fairly and properly protected.

Should a defendant, not in custody, be sentenced to pay a fine *forthwith*, and the fine and costs be not so paid, the Justice should verbally order the defendant into custody, until a return has been made to the warrant of distress then issued (Con. Stat. C. c. 103, s. 60). In default of distress, or of sufficient distress, or where the issuing of a warrant of distress would be ruinous to defendant and his family, the Justice, if he deem fit, may commit the defendant to gaol.

RETURN OF CONVICTIONS.—Justices are bound to make to the next ensuing General Quarter Sessions, through the Clerk of the Peace, a return of all fines, forfeitures and convictions made by them, and of the receipt and application of moneys paid by defendants. Justices neglecting to do this, are liable to a penalty of eighty dollars for each omission or neglect. (See article, "Return of Convictions.")

RETURN OF TWO OR MORE JUSTICES. — Where two or more Justices being present and joining in such conviction, *an immediate return thereof shall be made.* (Con. Stat. U. C. c. 124, s. 1.)

FORMAL CONVICTION OR ORDER.—The formal conviction or order shall afterwards be drawn up by the said Justice or Justices in proper form, under his or their hand and seal or hands and seals, and he or they shall cause the same to be lodged with the Clerk of the Peace, to be by him filed among the records of the General or Quarter Sessions of the Peace. (Con. Stat. C. c. 103, s. 42.)

It has not been the practice of Justices to return the formal conviction as here directed, except when a decision has been appealed against, and it is very probable that the practice to draw up a formal conviction has been considered merely directory, and not obligatory, as no penalty is attached for its non-performance; but with respect to the quarterly return of convictions, there can be no doubt of the extreme importance

of obeying the law. (See article "Return of Convictions," for full instructions and advice on this subject.)

INDICTABLE OFFENCES.—With respect to indictable offences, where the Justice or Justices intend to commit the prisoner for trial, he should not be specially committed for trial to any particular court, but to the next court of competent criminal jurisdiction; in every case, where a person is committed for trial, or bailed to answer to a criminal charge, the Justice of the Peace so committing or bailing, shall deliver, or cause to be delivered without delay to the County Attorney for the county, the informations, depositions, examinations, recognizances and papers connected with the charge; and the County Attorney shall be the "proper officer" of the Court within the meaning of the Consolidated Statutes of Canada, *respecting the duties of Justices of the Peace, out of Sessions, in relation to persons charged with indictable offences.* (Con. Stat. U. C. c. 106, s. 9.)

BAIL.—In cases of misdemeanor, *one* Justice can admit to bail; but in cases of felony, even in larcenies of the most trifling class, *one* Justice *cannot* admit the prisoner to bail. There must be *two*, who may bail the prisoner; but then only where the evidence of guilt is doubtful, and does not furnish such a strong presumption of guilt as to warrant his committal for trial. The amount of bail to be regulated by the magnitude of the offence charged, and by the ability of the parties. Where the evidence is reasonably clear, the Justices are not authorized to admit the prisoner to bail (Con. Stat. C. c. 102, ss. 52 & 53). In this event the parties must apply, on certified copies of the depositions, &c., to be obtained from the office of the County Crown Attorney, to one of the Judges of the superior courts, or to a Judge of the County Court in Chambers. (Con. Stat. C. c. 102. ss. 54 & 55).

RECOGNIZANCE TO APPEAR.—When a Justice commits a prisoner to gaol, or holds him to bail to take his trial, the Justice should at once, and before the parties leave his presence, or the proceedings be considered as concluded, bind over the prosecutor and the witnesses to prosecute and give evidence at

the next court of competent criminal jurisdiction at which the accused is to be tried; in which case the Justice must at the same time give a notice of such binding, signed by him, to the several persons bound (Con. Stat. C. c. 102, ss. 37 & 38). (For forms, see article "Recognizance.")

MEANING OF CERTAIN WORDS.—The word "month" shall mean a calendar month, and the word "year" a calendar year The word "shall" is to be construed as imperative, and the word "may" as permissive. (Con. Stat. U. C. c. 2, ss. 2 & 13.)

INFORMATION FOR ONE OFFENCE ONLY.—An information or complaint must be for one offence only, or for one matter of complaint only, and not for two or more matters of complaint (Con. Stat. C. c. 103, s. 25); and every such information or complaint may be laid or made by the complainant or informant in person or by his counsel or attorney, or other person authorized in that behalf. Where two or more persons are convicted of a joint offence, the penalty should be imposed upon the parties *severally*, and not jointly; and a conviction imposing a joint penalty is bad, and will expose the committing magistrate to an action (*Morgan* v. *Brown*, 4 Ad. & E. 515).

VARIANCE BETWEEN INFORMATION AND EVIDENCE.—No variance between any information and the evidence adduced in support thereof, as to the time at which such offence or act is alleged to have been committed, shall be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between such information and the evidence adduced in support thereof as to the place in which the offence or act is alleged to have been committed, shall not be deemed material, provided the offence or act be proved to have been committed within the jurisdiction of the Justice or Justices by whom such information is heard and determined (Con. Stat. C. c. 103, s. 21). If the party charged with the offence has been misled or deceived by such variance, the Justice may adjourn the hearing of the case (s. 22).

The following case illustrates what is not a variance within the Statute. An appellant was summoned on a charge of

being drunk and guilty of riotous behaviour, an offence punishable under a municipal by-law, and was convicted by the Justices of drunkenness, under the 21 Jac. I. c. 7. On a case stated, it was held that the conviction was bad, and that there was not a variance between the time or place mentioned in the summons and the evidence. The summons was for a kind of joint offence, and the Justices convicted of another offence, punishable in another and a different way. The proper course is in such a case to take out another summons.

VARIANCE BETWEEN WARRANT AND EVIDENCE.—No objection to be allowed for any variance between any warrant and the evidence adduced. (Con. Stat. C. c. 103, s. 12.)

SERVICE OF SUMMONS.—A summons may be served in any other jurisdiction than that of the Justice granting it, without being "backed" by any Justice in such other jurisdiction; the statutes on this subject only applying to warrants. (Con. Stat. C. c. 103, s. 11).

TIME FOR PAYMENT OF FINE.—It is not unusual for persons, on conviction, to request the Justices to allow time for payment of the fine, at the same time offering to pay down part immediately. Such applications cannot be safely granted, as it is conceived that after part payment the right of commitment would be gone, the Justice having no power to apportion the period of imprisonment. The law does not intend or provide for a man to suffer two modes of punishment, *i. e.*, by purse and person, for the same offence; and on this principle, when the goods of an offender are not sufficient to satisfy a distress, they ought not to be taken, but the ulterior punishment resorted to.

RE-HEARING A CASE.—Justices are sometimes requested to re-hear a case after the decision has been pronounced, on the ground of the parties having been taken by surprise by the evidence, or of having, subsequently to the hearing, discovered testimony which might have affected the judgment. Justices have, however, no power to re-open the investigation after they have once given judgment, and after the court is closed. The

only way, then, of impeaching their judgment is by appeal or by *certiorari*.

Justices are not obliged to fix the fine or imprisonment at the time of conviction, but may take time either for the purpose of informing themselves as to the legal penalty, or of taking advice as to the law applicable to the case.

TRANSMISSION OF PAPERS.—In all indictable cases where the prisoner is committed for trial, the Justice must, *as soon after as possible*, deliver all the papers in connexion with the case, including the original information, depositions, recognizances, as also the statement of the prisoner (if any), to the County Crown Attorney. (Con. Stat. C. c. 102, s. 39; Con. Stat. U. C. c. 106, s. 9).

COUNTY CROWN ATTORNEY—It may also be mentioned here that the County Crown Attorney is by law the authorized adviser of any Justice of the Peace, in respect to criminal offences brought before him for investigation or for adjudication (Con. Stat. Upper Canada, c. 106, s. 1, sub-s. 6). If by any Justice of the Peace requested in writing, containing a statement of the particular case, he (the County Crown Attorney) shall advise and instruct such magistrate in respect to criminal offences brought before him for preliminary investigation or for adjudication. The Justice should give the full and correct names of the parties, in the case in which advice is required.

COPIES OF DEPOSITIONS.—The parties are not entitled to copies of depositions in cases of summary conviction, and their only mode of compelling the production of the original is by *certiorari*. Neither is a person committed for default of sureties, and discharged at the Sessions, entitled to a copy of the depositions on which his commitment proceeded; but they should be furnished by the Justice if paid therefor.

CLAIM OF RIGHT.—If it appear that the act complained of were done by a defendant in the exercise of a *bona fide* claim or assertion of right, the jurisdiction of the Justices is at an end, although no express provision to that effect be contained

in the statute under which the proceeding takes place. "When "property or title is in question, the jurisdiction of Justices to "hear and determine in a summary manner is at an end, and "their hands tied from interfering, though the facts be such "that they have otherwise authority to take cognizance"—(Paley on Convictions). But the Justices must judge from all the circumstances whether or not the act was so done, and they are not to take the mere statement of the defendant; and it was held to be no proof of a *bona fide* claim subsisting, that several persons other than the individual charged had committed similar trespasses, using the same color of right, and that the plaintiff had obtained injunctions from the Court of Chancery against such parties (*R.* v. *Dodson*, 9 A. & E. 704; *R.* v. *Wrottesley*, 1 B. & Ad. 648). The jurisdiction of the Justices is not to be avoided by a mere fictitious pretence of title, and an assertion of right need not be regarded where the party's own showing or other manifest circumstances satisfy the Justices that the claim is wholly groundless (Paley's Convictions). The Justices must determine whether or not, upon the evidence before them, a *bona fide* question of title is raised. But if the matter be doubtful, it is enough to stay the jurisdiction, and Justices cannot give themselves jurisdiction by an erroneous and capricious decision.

Justices Interested.—A Justice should refrain from taking part in any matter in which he is individually interested, or where he is related to either party, or where he has advised upon the matter. The administration of justice should be free from suspicion; and where the Justice has the smallest interest, as being a member of a company making a charge, he should withdraw from the bench during the hearing. However small the interest, it is enough to disqualify him from acting judicially.

Refusal to Adjudicate.—If a Justice or Justices, from a mistaken opinion as to their jurisdiction, refuse to adjudicate, the Queen's Bench will interfere and compel them to shew cause why they should not hear and adjudicate.

CONVICTION.—This should be drawn up according to the rules under article "Conviction."

When the Justice or Justices convict, or make an order against the defendant, the Statute requires that a minute or memorandum thereof shall then be made, for which no fee shall be paid; and the conviction or order shall afterwards be drawn up by the said Justice or Justices in proper form, under his or their hand and seal or hands and seals; and he or they shall cause the same to be lodged with the Clerk of the Peace, to be by him filed among the records of the General or Quarter Sessions of the Peace. (Con. Stat. C. c. 103, s. 42.)

Time is thus given the Justice to draw up his conviction or order in legal form. If by mistake the Justice does not draw up a correct conviction, he may draw up and file a new or amended conviction at any time before the appeal is entered with the Clerk of the Peace at the Sessions, and before the return of a *certiorari*, although after a commitment, or after the penalty has been levied by distress, or after action brought against the magistrates.

ORDER.—It is a summary award which Justices of the Peace by various statutes are empowered to make in a variety of cases that come before them. Such as under the Master and Servants' Act, where the Justice makes an order on the master for payment of wages due to the servant. It is less formal and precise than a *conviction*. If an order be substantially right it is sufficient; whereas in a conviction certainty, even technical precision is necessary. But there is this important distinction between a conviction and an order, with respect to the power of correcting one that is discovered to be informal. When the Justice makes an order and delivers it out he cannot afterwards draw up another in a more formal shape in substitution for one that is defective—a conviction being the record of a judgment, and not existing until it is made up; but an order, being a direction to the party, which is complete as soon as it is drawn up and delivered (*R.* v. *Justices of Cheshire*, 8. B. & A. 439). An order for the payment of money may be bad in part and good for the residue. The *maxim* of the law—the correct not made void by the incorrect—applies to orders. And where

the line of demarcation can be clearly pointed out (to use the words of Justice Erle) the order may be supported as to the good part. But there is no distinction between a conviction and an order with respect to the necessity of shewing jurisdiction on the face of them; for it is of equal importance in both.

MINUTE OF DECISION.—A minute of the decision should be made at the time by the Justice or Justices, but the written order may be drawn up and signed by the Justice or Justices on a subsequent day to the hearing, and it will relate back to the time of pronouncing the verbal order. A copy of the minute of an order must be served on the defendant before any warrant of commitment or distress is granted. (Con. Stat. C. c. 103, s. 52).

COMMITMENT.—The offence for which the defendant is committed should be stated in a warrant of commitment with the same clearness and precision as in a conviction. It should shew that the defendant has been convicted of an offence over which the Justice has jurisdiction. It was till lately a matter of doubt whether a Justice could substitute a good warrant for a defective one, and thereby justify the gaoler in detaining the defendant in prison; but in the recent case of *Ex parte Cross*, 4 J. P. 407, this doubt has been removed. In this case the first commitment of the defendant under the Vagrant Act was bad on the face of it; but the court held, after argument, that the prisoner might be lawfully detained under a second warrant for the same offence, bearing date the same day as the first warrant, and lodged with the gaoler several days after; having an *endorsement* requiring the gaoler to substitute the same for the first warrant. The court considered the decision in *R.* v. *Richards*, 5 A. & E. 926, as an express authority in support of their judgment, and that it was good sense and good law.

CONSECUTIVE IMPRISONMENTS.—When an offender is convicted at the same time of two or more separate offences in succession, and sentenced to imprisonment in each case, the practice to be adopted is to make out immediately separate warrants on each conviction—the second warrant stating that the imprisonment thereunder is to commence and take effect upon the expiration of the first. (Con. Stat. C. 103, s. 63.)

There is another course that may be adopted, and that is—to direct (where the statute will sanction such an adjudication) the payment of the fine for the first offence immediately, and for the second offence within the time adjudged as the period of imprisonment for the first offence, with imprisonment in default of payment for a prescribed term. There is no legal objection to this course, but it allows the possibility of the offender paying the first fine and absconding before the time limited for payment of the second, and thereby escaping a continuous unbroken imprisonment.

Appeal.—The right of appeal lies against any order, decision, or conviction of any Justice or Justices of the Peace, in any matter not being a crime by Con. Stat. U. C. c. 114, and against any *summary conviction* under the criminal acts (Con. Stat. C. c. 90, 91, 92, 93, 95, 96, 97, 98, by Con. Stat. C. c. 99 s. 117). Summary convictions for crimes not included in these statutes, and wherein the statute creating the offence does not give the right to appeal, it is conceived that no appeal lies; but a *certiorari* lies unless expressly taken away. It is to be noted, that the mode of initiating an appeal against a summary conviction or decision under the criminal acts above mentioned, is different to that against an order, decision or conviction in any matter not being a crime.

Liability of Justices.—When Justices of the Peace are guilty of any gross act of oppression committed by them in the exercise or alleged exercise of their magisterial duties, or are actuated by any vindictive or corrupt motive, they are liable to be punished by indictment or criminal information in the Court of Queen's Bench.

Not Punishable for Errors of Judgment.—But the Judges have uniformly refused to punish or interfere with Justices for mere *errors in judgment*; and Lord Mansfield, C.J., declared that the court would never interpose its authority to punish a magistrate unless it was clearly shewn that he had acted *partially*, *maliciously*, or *corruptly*, and had consequently abused the trust reposed in him.

JUSTICES LIABLE TO ACTIONS.—Justices are liable to *actions* at law, in respect of proceedings by them which appear to be bad on the face of them, because they cannot justify under such proceedings.

PROTECTION OF JUSTICES.—The legislature, in addition to several protective clauses, inserted in acts giving summary jurisdiction, has by Con. Stat. U. C. c. 126 provided a sufficient protection to Justices to cover all errors of judgment in the performance of their duties, in respect to any matter within their jurisdiction. It must be *alleged* and *proved* that the act complained of was done *maliciously*, and without reasonable and probable cause. But by sec. 2, where the act complained of has been done by the Justice in a matter where he had *no* jurisdiction, or in which he *exceeded* his jurisdiction, such allegation and proof are not necessary—any such action will not lie for any act done under any conviction or order until the conviction or order has been quashed, nor for any act done under a warrant to procure the appearance of the party, which shall be followed by a conviction or order in the same matter, until the conviction or order has been quashed.

In concluding these prefatory remarks, and especially in connexion with the liability and protection of Justices, the judgment of Chief Justice Abbot in the case of *R.* v. *Borrow*, in the year 1820, contains much that should be gravely considered and duly appreciated by every Canadian Justice :—
"The application to this court is made against a gentleman
"who is one of that class of persons to whom this country is
"under as great obligation as this or any other nation is, or
"ever was to any members of its community. I speak of the
"gentlemen resident in the different counties of England, who
"act in the execution of His Majesty's Commission of the
"Peace, and who gratuitously devote a great portion of their
"time, and bestow much valuable, but often thankless labour
"in the administration of many branches of the law; and
"among others in most of the early, and in many of the mature
"stages of our criminal jurisprudence. In this most valuable
"class many persons are found who possess a sound knowledge

"of the law, united with the most useful and extensive prac-
"tical information. They are called upon in many cases of a
"difficult and in many of a delicate kind, and are in general
"addressed by those who apply to them with the respect that
"is due to their station and character. They are indeed like
"every other subject of this kingdom, answerable to the law
"for the faithful and upright discharge of their trust and
"duties. But whenever they have been challenged upon this
"head, either by way of indictment, or criminal information,
"the question has always been, not whether the act done
"might, upon full and mature investigation, be found strictly
"right, but from what *motive* it had proceeded, whether from
"a *dishonest*, *oppressive* or *corrupt* motive (under which
"description *fear* and *favour* may generally be included), or
"from *mistake* or *error;* in the former case alone, have
"they become the objects of punishment. To punish as a
"criminal any person who in the gratuitous exercise of a public
"trust, may have fallen into error or mistake, belongs only to
"the despotic ruler of an enslaved people, and is wholly abhor-
"rent to the jurisprudence of this kingdom." (*R.* v. *Borrow*, Esq. 3 B. & Ald. 432.)

FORM OF COMMISSION OF THE PEACE.

[L. S.] MONCK:—(*or as the case may be.*)

PROVINCE OF CANADA.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

To —— (*here follow the names*).

Know ye, that we have assigned you jointly and severally, and every one of you, our Justices to keep the peace in our —— count— of ——, in our said province of Canada, and to keep and cause to be kept all the ordinances and statutes for the good of the peace, and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said count—, according to the force, form and effect of the same, and to chastise and punish all persons that offend against the form of those ordinances and statutes, or any one of them, in the aforesaid —— count—, as it ought to be done, according to the form of those ordinances and statutes, and to cause to come before you or any one of you, all those who to any one or more of our people concerning their bodies, or the firing of their houses have used threats, and to find sufficient security for the peace or their good behaviour towards us and our people, and if they shall refuse to find such security, then confine them in our prisons until they shall find such security, to cause to be safely kept. We have also assigned you, and every two or more of you, our Justices, to enquire more fully the truth by the oaths of good and lawful men of the —— count— aforesaid, by whom the truth of the matters may be the better known and enquired of, and all manner of felonies, poisonings, trespassings, regratings, engrossings, and extortions whatsoever, and of all and singular the

crimes and offences of which the Justices of the Peace may or ought lawfully to enquire by whomsoever, and after what manner soever in the said —— count— had, done or perpetrated, or which hereafter shall there happen to be done or attempted; and also of all those who in the aforesaid —— count— in companies, against our peace in disturbance of our people with armed force have gone or rode, or who hereafter shall presume to go or ride; and also of all those who shall have there lain in wait, or hereafter shall presume to lie in wait to maim or cut or kill our people; and also of all victuallers, and all and singular other persons, who in the abuse of weights and measures, or selling victuals against the form of the ordinances and statutes, or any one of them therefor made, for the common benefit of our people of our said province, have offended, or attempted, or hereafter shall presume in our said —— count— to offend or attempt; and also of all sheriffs, bailiffs, constables, stewards, keepers of gaols, and other officers who, in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been or hereafter shall happen to be careless, remiss, or negligent in our aforesaid —— count—; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever and after what manner soever in our aforesaid —— count— done or perpetrated, or which hereafter shall happen to be done or attempted in what manner soever; and to inspect all indictments whatsoever so before you or any of you taken, or to be taken, or before others late our Justices of the Peace in our aforesaid —— count— made or taken, and not yet determined, and to make and continue process thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed; and to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes aforesaid, as it has been accustomed or ought

to be done, and the same offenders, for their offences aforesaid, by fines, ransoms, amercements, forfeitures, or other means, according to the law and custom of that part of our said province called Upper Canada, and form of the ordinances and statutes aforesaid to chastise and punish.

Provided always, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, should happen to arise, then let judgment in no wise be given before you, or any two or more of you unless in the presence of one of our Justices of our Court of Queen's Bench, or one of our Justices of our Court of Common Pleas, or one of our Justices appointed to hold the assizes in the said —— count—. And therefore, we command you and every of you, that to keeping the peace, ordinances and statutes, and all and singular the premises, you diligently apply yourselves; and that at certain days and places which you, or any two or more of you as is aforesaid shall appoint, into the premises you make inquiries, and all and singular the premises hear and determine, and perform and fulfill them in the aforesaid form, doing therein what to justice appertains according to the law and custom of that part of our said province called Upper Canada; saving to us our amercements and other things to us thereunto belonging. For we have commanded and do hereby command our sheriff of our said —— count—, that at certain days and places which you or any such two or more of you as is aforesaid to him shall make known, he cause to come before you or any such two or more of you as is aforesaid, such and so many good and lawful men of his —— count—, by whom the truth of the matter in the premises, shall be better known and enquired into.

In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said province to be hereunto affixed: Witness, our right trusty and well-beloved (*here follow the name, style and title of the Governor*), Governor General of British North America, and Captain General and Governor-in-Chief in and over our provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince

Edward, and Vice Admiral of the same, &c., at ——, in the year of our Lord one thousand eight hundred and ——, and in the —— year of our reign.

By command,

—— ——, *Secretary.*

The commission, as above, under the great seal, includes all the names of those intended to be thus honoured by Her Majesty, and is transmitted to the office of the Clerk of the Peace for the county, and there filed of record.

DUTIES OF JUSTICES OF THE PEACE.

CON. STAT. C., CAP. CII.

AN ACT RESPECTING THE DUTIES OF JUSTICES OF THE PEACE, OUT OF SESSIONS, IN RELATION TO PERSONS CHARGED WITH INDICTABLE OFFENCES.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

For what offences a Justice of the Peace may grant a warrant to cause a person charged therewith to be brought before him.

1. In all cases where a charge or complaint (A) is made before any one or more of Her Majesty's Justices of the Peace for any territorial division in this province, that any person has committed, or is suspected to have committed, any treason, or felony, or any indictable misdemeanor or offence within the limits of the jurisdiction of such Justice or Justices of the Peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such Justice or Justices, is residing or being, or is suspected to reside or be within the limits of the jurisdiction of such Justice or Justices, then, and in every such case, if the person so charged or complained against is not in custody, such Justice or Justices of the Peace may issue his or their warrant (B) to apprehend such person, and to cause him to be brought before such Justice or Justices, or any other Justice or Justices for the same territorial division.

In what cases the party may be summoned instead of issuing a warrant in the first instance.

2. In all cases, the Justice or Justices to whom the charge or complaint is preferred, instead of issuing in the first instance his or their warrant to appre-

hend the person so charged or complained against, may, if he or they think fit, issue his or their summons (C) directed to such person, requiring him to appear before the said Justice or Justices, at the time and place to be therein mentioned, or before such other Justice or Justices of the same territorial division as may then be there, and if, after being served with such summons in manner hereinafter mentioned, he fails to appear at such time and place, in obedience to such summons, the said Justice or Justices, or any other Justice or Justices of the Peace for the same territorial division, may issue his or their warrant (D) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other Justice or Justices of the Peace for the same territorial division, to answer to the said charge or complaint, and to be further dealt with according to law; but any Justice or Justices of the Peace may issue the warrant hereinbefore first mentioned, at any time before or after the time mentioned in such summons for the appearance of the said accused party.*

Warrant to apprehend party against whom an indictment is found.

3. In case an indictment be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general or quarter sessions of the peace, against any person then at large, and whether such person has been bound by any recognizance to appear to answer to any such charge or not, and in case such person has not appeared and pleaded to such indictment, the person who acts as clerk of the Crown, marshal, or clerk of assize at such court of oyer and terminer, or gaol delivery, or as Clerk of the Peace at such sessions, shall, at any time after the end of the sessions

* Though power is by the above section given to the Justice of the Peace, "in all cases" to issue his summons, yet, it should not be issued in any case of treason or felony.

of oyer and terminer, or gaol delivery, or session of the peace, at which such indictment has been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of twenty cents, grant unto such prosecutor or person a certificate (F) of such indictment having been found; and upon production of such certificate to any Justice or Justices of the Peace for the territorial division in which the offence is in such indictment alleged to have been committed, or in which the person indicted resides, or is supposed or suspected to reside or be, such Justice or Justices shall issue his or their warrant (G) to apprehend the person so indicted, and to cause him to be brought before such Justice or Justices, or any other Justice or Justices for the same territorial division, to be dealt with according to law.*

Commitment.

4. If such person be thereupon apprehended and brought before any such Justice or Justices, such Justice or Justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the person charged and named in such indictment, shall without further inquiry or examination, commit (H) him for trial or admit him to bail in manner hereinafter mentioned.†

If person indicted be already in prison for some other offence, Justice may order him to be detained until removed by writ of *habeas corpus*, or otherwise discharged.

5. If the person so indicted is confined in any gaol or prison for any other offence than that charged in such indictment at the time of such application and production of such certificate to such Justice or Justices as aforesaid, such Justice or Justices, upon its

* Whenever a prosecutor shall have preferred a bill of indictment against a defendant, and shall move the court for process to issue upon the said indictment against the said defendant, the prosecutor so applying should before such process issue, himself enter into such recognizance as the court shall direct, to prosecute the law with effect against the said defendant. (Dickinson's Quarter Sessions, by Tyrwhitt, page 228, and note H.)

The Clerk of the Peace should keep blank warrants to apprehend, to be issued under this section, and also the warrant of commitment to be issued by the Justice under the 4th section; and should cause a copy of each to accompany each certificate under the third section.

† Though it would from this section appear that a Justice can bail a prisoner

being proved before him or them upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, shall issue his or their warrant (I), directed to the gaoler or keeper of the gaol or prison in which the person so indicted is then confined as aforesaid, commanding him to detain such person in his custody, until, by Her Majesty's writ of *habeas corpus*, he be removed therefrom for the purpose of being tried upon the said indictment, or until he be otherwise removed or discharged out of his custody by due course of law.

Not to prevent the issuing of bench warrants.

6. Nothing hereinbefore contained shall prevent the issuing or execution of bench warrants, whenever any court of competent jurisdiction thinks proper to order the issuing of any such warrant.*

Warrant may be issued on Sunday.

7. Any Justice or Justices of the Peace may grant or issue any warrant as aforesaid, or any search warrant on a Sunday, as well as on any other day.

When a charge is made, if a warrant is to be issued, information, &c., upon oath, &c.

8. In all cases when a charge or complaint for an indictable offence is made before any Justice or Justices aforesaid, if it be intended to issue a warrant in the first instance against the party charged, an information and complaint thereof (A) in writing, on the oath or affirmation of the informant, or of

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brought before him, upon a warrant issued under the authority of the second section of this Act, yet, upon perusal of section 52, it will be found that, in cases of felony, they cannot bail, because they cannot peruse the evidence and decide that it "does not furnish such a strong presumption of guilt as to warrant his committal for trial."

* When the party indicted is under recognizance to appear at the sessions at which the indictment is found, no process should be had against him *during* the session, because it is looked on, in law, as one day, whatever may be its duration, and the defendant has the whole of it in which to make his appearance; but if he has not appeared, the prosecutor may bespeak a bench warrant during the session, which will, it is said, be issued at the close thereof.

If no bench warrant be applied for before sessions are over, the certificate provided for by the third section should issue. (Dickinson's Quarter Sessions, 230, 2 Hawkins, ch. 27, sec. 8.)

some witness or witnesses in that behalf, shall be laid before such Justice or Justices.*

When if summons to be issued instead of a warrant, information, &c., need not be on oath.

9. When it is intended to issue a summons instead of a warrant in the first instance, the information and complaint shall also be in writing, and be sworn to or affirmed in manner aforesaid, except only in cases where by some Act of Parliament it is specially provided that such information and complaint may be by parole merely, and without any oath or affirmation to support or substantiate the same.*

No objection allowed for alleged defect in form or substance.

10. No objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the Justice or Justices who takes the examination of the witnesses in that behalf as hereinafter mentioned.

In certain cases, Justice may grant a warrant to search dwelling house, &c.

11. If a credible witness proves upon oath before a Justice of the Peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any larceny or felony has been committed, is in any dwelling house, outhouse, garden, yard, croft, or other place or places, the Justice may grant a warrant (E 2) to search such dwelling house, garden, yard, croft, or other place or places, for such property.

Upon complaint being laid, Justices receiving the same may issue summons or warrant for appearance of party charged.

12. Upon such information and complaint being so laid as aforesaid, the Justice or Justices receiving the same may, if he or they think fit, issue his or their summons or warrant, as hereinbefore directed, to cause the person charged to be and appear before him or them, or any other Justice or Justices of the Peace for the same territorial division, to be dealt

* The marginal notes to sections 8 and 9 are calculated to mislead, by causing the person perusing them to entertain the opinion that an information need *not* be upon oath unless a warrant is to be issued; whereas, the information must be in writing and upon oath, in all cases except those specially provided for, such as the case of cruelty to animals.

with according to law: and every summons (*C*) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is directed to be and appear at a certain time and place therein mentioned, before the Justice who issues such summons, or before such other Justice or Justices of the Peace for the same territorial division as may then be there, to answer to the said charge, and to be further dealt with according to law.

How summons to be served.

13. Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed, by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same for him with some person at his last or most usual place of abode.

Constables, &c., to attend and depose.

14. The constable or other peace officer who serves the same in manner aforesaid, shall attend at the time and place, and before the Justice or Justices in the said summons mentioned, to depose, if necessary, to the service of such summons.

If party summoned do not attend, Justice may issue a warrant to compel attendance.

15. If the person served does not appear before such Justice or Justices, at the time and place mentioned in such summons, in obedience to the same, such Justice or Justice may issue his or their warrant (D) for apprehending the party so summoned, and bringing him before such Justice or Justices, or before some other Justice or Justices for the same territorial division to answer the charge in the information and complaint mentioned, and to be further dealt with according to law.

No objection allowed for alleged defect in form or substance.

16. No objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecutor before the Justice or Justices who

takes the examination of the witnesses in that behalf as hereinafter mentioned.

If variance appears to Justices, they may adjourn the case to a future day.

17. If it appears to the Justice or Justices that the party charged has been deceived or misled by any such variance, such Justice or Justices, at the request of the party so charged, may adjourn the hearing of the case to some future day, and, in the meantime, remand the party or admit him to bail in manner hereinafter mentioned.

Warrant to apprehend parties to be under the hand and seal of Justice.

18. Every warrant (B) hereafter issued by any Justice or Justices of the Peace to apprehend any person charged with any indictable offence, shall be under the hand and seal, or hands and seals, of the Justice or Justices issuing the same, and may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed, or to such constable and all other constables or peace officers in the territorial division within which the Justice or Justices issuing the same has jurisdiction, or generally to all the constables or peace officers within such last mentioned territorial division; and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the Justice or Justices issuing such warrant, or before some other Justice or Justices of the Peace for the same territorial division, to answer to the charge contained in the said information, and to be further dealt with according to law.

Warrant may remain in force until executed.

19. It shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until executed.

How and where warrant may be executed.

20. Such warrant may be executed by apprehending the offender at any place in the territorial division within which the justice or justices issuing the

same have jurisdiction, or in case of fresh pursuit, at any place in the next adjoining territorial division, and within seven miles of the border of such first mentioned territorial division, without having such warrant backed, as hereinafter mentioned.

On what conditions constables, &c. may execute warrant.

21. In case any warrant be directed to all constables or other peace officers in the territorial division within which the Justice or Justices have jurisdiction, any constable or other peace officer for any place within such territorial division may execute the warrant at any place within the jurisdiction for which the said justice or justices acted when he or they granted such warrant, in like manner as if such warrant had been directed specially to such constable by name, and notwithstanding the place within which such warrant is executed be not within the place for which he is constable or peace officer.

No objection allowed for alleged defect in form or substance.

22. No objection shall be taken or allowed to any such warrant for any defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the justice or justices who takes the examination of the witnesses in that behalf as hereinafter mentioned.

If variance appears to the Justices, they may adjourn the case to a future day.

23. If it appears to the Justice or Justices that the party charged has been thereby deceived or misled by any such variance, such justice or justices, at the request of the party charged, may adjourn the hearing of the case to some future day, and in the meantime may remand the party, or admit him to bail in manner hereinafter mentioned.

Regulations as to the backing of warrants.

24. If the person against whom any such warrant has been issued, cannot be found within the jurisdiction of the Justice or Justices by whom the same was issued, or if he escapes, goes into, resides, or is supposed or suspected to be, in any place within this province, whether in Upper or in Lower Canada, out of the jurisdiction of the Justice or Justices issu-

ing such warrant, any Justice of the Peace within the jurisdiction of whom such person so escapes or goes, or in which he resides, is, or is supposed or suspected to be, upon proof made on oath of the hand-writing of the Justice who issued the same, and without any security being given, shall make an endorsement (K) on such warrant, signed with his name, authorizing the execution of such warrant within the jurisdiction of the Justice making such endorsement, and which endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the territorial division where such warrant has been so endorsed, to execute the same in such other territorial division, and to carry the person against whom such warrant issued, when apprehended, before the Justice or Justices of the Peace who first issued the said warrant, or before some other Justice or Justices of the Peace for the same territorial division, or before some Justice or Justices of the territorial division, where the offence mentioned in the said warrant appears therein to have been committed.

Duty of constable in case of arrest.

25. If the prosecutor or any of the witnesses upon the part of the prosecution be then in the territorial division where such person has been so apprehended, the constable, or other person or persons who have apprehended him may, if so directed by the Justice backing the warrant, take and convey him before the Justice who backed the warrant, or before some other Justice or Justices for the same territorial division or place; and the said Justice or Justices may thereupon take the examination of the prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a Justice or Justices of the Peace, with an offence alleged to have been committed in another

territorial division than that in which such persons have been apprehended.

Power to Justices to summon witnesses to attend and give evidence.

26. If it be made to appear to any Justice of the Peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such Justice shall issue his summons (L 1) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in the summons, before the said Justice, or before such other Justice or Justices of the Peace for the same territorial division as may then be there, to testify what he knows concerning the charge made against such accused party.

If summons not obeyed, warrant may be issued to compel attendance.

27. If any person so summoned neglects or refuses to appear at the time and place appointed by the said summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of the summons having been served upon such person, either personally or with some person for him at his last or most usual place of abode,) the Justice or Justices before whom such person should have appeared, may issue a warrant (L 2) under his or their hands and seals, to bring such person, at a time and place to be therein mentioned, before the Justice who issued the said summons, or before such other Justice or Justices of the Peace for the same territorial division as may then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the Justice who issued the same.

In certain cases, warrant may issue in first instance.

28. If the Justice be satisfied by evidence upon oath or affirmation that it is probable the person will not attend to give evidence unless compelled so

to do, then, instead of issuing such summons, the Justice may issue his warrant (L 3) in the first instance, and the warrant, if necessary, may be backed as aforesaid.

Persons appearing on summons and refusing to be examined may be committed.

29. If on the appearance of the person so summoned before the said last mentioned Justice or Justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or having taken such oath or affirmation, refuses to answer the questions concerning the premises then put to him without giving any just excuse for such refusal, any Justice of the Peace then present and there having jurisdiction, may, by warrant (L 4) under his hand and seal, commit the person so refusing to the common gaol or house of correction for the territorial division where the person so refusing then is, there to remain and be imprisoned for any time not exceeding ten days, unless he in the meantime consents to be examined and to answer concerning the premises.

As to the examination of witnesses.

30. In all cases where any person appears or is brought before any Justice or Justices of the Peace charged with any indictable offence, whether committed in this province or upon the high seas, or on land beyond the sea, or whether such person appears voluntarily upon summons or has been apprehended, with or without warrant, or is in custody for the same or any other offence, such Justice or Justices before he or they commit such accused person to prison for trial, or before he or they admit him to bail, shall, in the presence of such accused person, (who shall be at liberty to put questions to any witness produced against him,) take the statement (M) on oath or affirmation of those who know the facts and circumstances of the case, and shall put the

same in writing, and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall be signed also by the Justice or Justices taking the same.*

Justice to administer oath or affirmation.

31. The Justice or Justices before whom any such witness appears to be examined as aforesaid, shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such Justice or Justices are hereby empowered to do; and if upon the trial of the person so accused as first aforesaid, it be proved upon the oath or affirmation of any credible witness, that any person whose deposition has been taken as aforesaid is dead, or is so ill as not to be able to travel, and if it be also proved that such deposition was taken in presence of the person so accused, and that he, his counsel or attorney, had a full opportunity of cross-examining the witness, then if such deposition purports to be signed by the Justice by or before whom the same purports to have been taken, it shall be read as evidence in such prosecution without further proof thereof, unless it be proved that such deposition was not in fact signed by the Justice purporting to have signed the same.*

After examination of the accused, Justice to read depositions taken against him and caution him as to any statement he may make.

32. After the examinations of all the witnesses on the part of the prosecution as aforesaid have been completed, the Justice of the Peace, or one of the Justices by or before whom such examinations have been so completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You

* The perusal of form "M," referred to in sec. 30, is calculated to lead the Justice to suppose that it is only necessary for him to sign his name at the bottom of the depositions of all the witnesses, in the case examined before him on the same day; whereas, he should sign his name at the bottom of the deposition of each witness.

are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial:" and whatever the prisoner then says in answer thereto shall be taken down in writing (N) and read over to him, and shall be signed by the said Justice or Justices, and kept with the depositions of the witnesses, and be transmitted with them as hereinafter mentioned.*

Examinations may be given in evidence in certain cases.

33. Upon the trial of the accused person, the examinations may, if necessary, be given in evidence against him without further proof thereof, unless it be proved that the Justice or Justices purporting to have signed the same, did not in fact sign the same.

Explanations to be made to the accused party.

34. The said Justice or Justices, before such accused person makes any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

Nothing herein contained to prevent prosecutor from giving in evidence confession, &c.

35. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement made at any time by the person accused or charged which by law would be admissible as evidence against him.

Place where examinations taken not an open court, and no person to remain without consent.

36. The room or building in which the Justice or Justices take the examinations and statement as aforesaid, shall not be deemed an open court for that purpose; and such Justice or Justices, in his or their discretion, may order that no person shall have access to or be or remain in such room or building, without the consent or permission of such Jus-

* After the Justice gives the caution under this section, he should continue and give the *explanation* directed by section 34.

tice or Justices, if it appear to him or them that the ends of justice will be best answered by so doing.

Power to Justices to bind over the prosecutors and witnesses by recognizances.

37. Any Justice or Justices before whom any witness is examined as aforesaid, may bind by recognizance (O 1) the prosecutor, and every such witness to appear at the next court of competent criminal jurisdiction at which the accused is to be tried, then and there to prosecute, or prosecute and give evidence, or to give evidence (*as the case may be*), against the party accused, which said recognizance shall particularly specify the profession, art, mystery or trade of every such person entering into or acknowledging the same, together with his Christian and surname, and the parish, township or place of his residence, and if his residence be in a city, town or borough, and when convenient so to do, the name of the street and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof, or lodger therein.

Recognizances to be subscribed to by Justices, &c.

38. The said recognizance, being duly acknowledged by the person entering into the same, shall be subscribed by the Justice or Justices before whom the same is acknowledged, and a notice (O 2) thereof, signed by the said Justice or Justices, shall at the same time be given to the person bound thereby.

Recognizances to be transmitted to the court in which the trial is had.

39. The several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) shall be delivered by the said Justice or Justices, or he or they shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, that is to say, in Upper Canada, to the County Attorney for the county, without delay, and in Lower Canada, to the proper officer, before or at the opening of the court, on the first day of the sitting thereof, or at such other time as the Judge, Justice, or person who is to

preside at such court, or at the said trial, orders and appoints.

Witness refusing to enter into recognisance may be committed.

40. If any such witness refuses to enter into or ackowledge such recognizance as aforesaid, the Justice or Justices of the Peace by his or their warrant (P 1), may commit him to the common gaol or house of correction for the territorial division in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness duly enters into such recognizance as aforesaid before some one Justice of the Peace for the territorial division in which such gaol or house of correction is situate.

Discharge.

41. If afterwards, for the want of sufficient evidence in that behalf, or other cause, the Justice or Justices before whom such accused party has been brought, does not commit him or hold him to bail for the offence charged, such Justice or Justices, for the same territorial division, by his or their order (P 2) in that behalf, may order and direct the keeper of such common gaol or house of correction where such witness is in custody, to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

Power to Justice to remand the accused from time to time not exceeding eight days by warrant.

42. If from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the examination or further examination of the witnesses for any time, the Justice or Justices before whom the accused appears or has been brought by his or their warrant (Q 1) may from time to time remand the party accused for such time as by such Justice or Justices in their discretion may be deemed reasonable, not exceeding eight clear days at any one time, to the common gaol, or house of correction or other prison, lock-up house, or place of security in the territorial division for which such Justice or Justices are then acting.

If remand be for three days only, by verbal order.

43. If the remand be for a time not exceeding three clear days, such Justice or Justices may verbally order the constable or other person in whose custody such accused party may then be, or any other constable or person to be named by the Justice or Justices in that behalf, to continue or keep such accused party in his custody, and to bring him before the same or such other Justice or Justices as may be there acting at the time appointed for continuing the examination.

But accused may be brought up at an earlier day.

44. Any such Justice or Justices may order such accused party to be brought before him or them, or before any other Justice or Justices of the Peace for the same territorial division, at any time before the expiration of the time for which such party has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order.

Party accused may be admitted to bail on the examination.

45. Instead of detaining the accused party in custody during the period for which such accused party has been so remanded, any one Justice of the Peace before whom such party has so appeared or been brought as aforesaid, may discharge him upon his entering into a recognizance (Q 2, 3) with or without a surety or sureties, at the discretion of such Justice, conditioned for his appearance at the time and place appointed for the continuance of the examination.

If party does not appear upon recognizance, in U. C., the Justice may transmit the same to the Clerk of the Peace.

46. If such accused party does not afterwards appear at the time and place mentioned in such recognizance, then, in Upper Canada, the said Justice or any other Justice of the Peace who may then and there be present, having certified (Q 4) upon the back of the recognizance the non-appearance of such accused party, may transmit the recognizance to the Clerk of the Peace for the territorial division within which the recognizance was taken, to be proceeded upon in like manner as other recog-

nizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the said accused party.

If a person be apprehended in one division, on charge of offence committed in another, he may be examined in the former.

47. Whenever a person appears or is brought before a Justice or Justices of the Peace in the territorial division wherein such Justice or Justices have jurisdiction, charged with an offence alleged to have been committed by him within any territorial division wherein such Justice or Justices have not jurisdiction, such Justice or Justices shall examine such witnesses and receive such evidence in proof of the said charge as may be produced before him or them within his or their jurisdiction; and if in his or their opinion such testimony and evidence be sufficient proof of the charge made against the accused party, such Justice or Justices shall thereupon commit him to the common gaol or house of correction for the territorial division where the offence is alleged to have been committed, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor (if he has appeared before him or them) and the witnesses by recognizance as hereinbefore mentioned.

And if evidence not deemed sufficient, may be transmitted to the proper division, &c.

Where he may be committed for trial, or be bailed.

48. If such testimony and evidence be not, in the opinion of such Justice or Justices, sufficient to put the accused party upon his trial for the offence with which he is charged, then the Justice or Justices shall, by recognizance, bind over the witness or witnesses whom he has examined to give evidence as hereinbefore is mentioned; and such Justice or Justices shall, by warrant (R 1) under his or their hand and seal or hands and seals, order the said accused party to be taken before some Justice or Justices of the Peace in and for the territorial division where the offence is alleged to have been committed, and shall at the same time deliver up the information and complaint, and also the depositions and recog-

nizances so taken by him or them to the constable who has the execution of such last mentioned warrant, to be by him delivered to the Justice or Justices before whom he takes the accused, in obedience to the said warrant, and the said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last mentioned Justice or Justices, and shall, together with such depositions and recognizances as such last mentioned Justice or Justices take in the matter of such charge against the said accused party, be transmitted to the clerk of the court or other proper officer where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party should be committed for trial upon the said charge, or be admitted to bail.

As to payment of expenses of conveying the accused into the proper division.

49. In case such accused party be taken before the Justice or Justices last aforesaid, by virtue of the said last mentioned warrant, the constable or other person or persons to whom the said warrant is directed, and who has conveyed such accused party before such last mentioned Justice or Justices, shall upon producing the said accused party before such Justice or Justices, and delivering him into the custody of such person as the said Justice or Justices direct or name in that behalf, be entitled to be paid his costs and expenses of conveying the said accused party before the said Justice or Justices.

Justice to furnish constable with a receipt or certificate, &c.

50. Upon the said constable delivering to the said Justice or Justices the warrant, information (if any) depositions and recognizances as aforesaid, and proving by oath the handwriting of the Justice or Justices who has subscribed the same, such Justice or Justices before whom the said accused party is produced, shall thereupon furnish such constable with

a receipt or certificate (R 2) of his or their having received from him the body of the said accused party, together with the said warrant, information (if any) depositions and recognizances, and of his having proved to him or them, upon oath, the handwriting of the Justice who issued the said warrant.

Constable on producing such certificate to be paid.

51. The said constable, on producing such receipt or certificate to the sheriff or high bailiff, if he was employed by such officer, and if not, then to the treasurer of the municipality or division in which such accused party was apprehended, shall be entitled to be paid all his reasonable charges, costs and expenses of conveying such accused party into such other territorial division, and of returning from the same.

Power to any two Justices to bail persons charged with felony, &c.

52. When any person appears before any Justice of the Peace charged with a felony or suspicion of felony, and the evidence adduced is in the opinion of such Justice, sufficient to put such accused party on his trial as hereinafter mentioned, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, such Justice, jointly with some other Justice of the Peace, may admit such person to bail upon his procuring and producing such surety or sureties as in the opinion of such two Justices will be sufficient to ensure the appearance of the person so charged at the time and place when and where he is to be tried for the offence; and thereupon such two Justices shall take the recognizances (S 1, 2) of the said accused person and his sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave.

In case of misdemeanor, one Justice may bail.

53. When the offence committed or suspected to have been committed is a misdemeanor, any one Justice may admit to bail in manner aforesaid; and

such Justice or Justices may at their discretion require such bail to justify upon oath as to their sufficiency, which oath the said Justice or Justices may administer, and in default of such person procuring sufficient bail, then such Justice or Justices may commit him to prison, there to be kept until delivered according to law.

County Judge in his discretion may order a party committed for trial to be admitted to bail.

54. In Upper Canada, in all cases of felony, where the party accused has been finally committed as hereinafter provided, any county judge who is also a Justice of the Peace for the county within the limits of which such accused party is confined, may, in his discretion, on application made to him for that purpose, order such accused party or person to be admitted to bail on entering into recognizance with sufficient sureties before two Justices of the Peace, in such an amount as the said judge directs, and thereupon such Justices shall issue a warrant of deliverance (S 3) as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of such party to bail.

Certain offences not bailable except by Judge's order.

55. No Justice or Justices of the Peace or county judge shall admit any person to bail accused of treason or murder, nor shall any such person be admitted to bail, except, in Lower Canada, by order of Her Majesty's Court of Queen's Bench, or of one of the judges thereof, or of a judge of the Superior Court, or, in Upper Canada, by order of Her Majesty's Court of Queen's Bench or Common Pleas, or of one of the judges thereof; and nothing herein contained shall prevent such courts or judges admitting any person accused of misdemeanor or felony to bail when they may think it right so to do.

Justice bailing after commitment to issue a warrant of deliverance.

56. In all cases where a Justice or Justices of the Peace admits to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such Justice or Justices shall send

to or cause to be lodged with the keeper of such prison a warrant of deliverance (S 3) under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same.

If the evidence be deemed insufficient, party to be discharged.

57. When all the evidence offered upon the part of the prosecution against the accused party has been heard, if the Justice or Justices of the Peace then present be of opinion that it is not sufficient to put the accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such Justice or Justices the evidence is sufficient to put the accused party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce such Justice or Justices to commit the accused for trial without bail, or if the offence with which the party is accused be a misdemeanor, then such Justices shall admit the party to bail as hereinbefore provided, but if the offence be a felony, and the evidence given is such as to raise a strong presumption of guilt, then such Justice or Justices shall by his or their warrant (T 1) commit him to the common gaol for the territorial division to which he may by law be committed, or in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the territorial division within which such Justice or Justices have jurisdiction, to be there safely kept until delivered by due course of law.

If sufficient, to be bailed or committed &c.

Provisions touching the conveyance of prisoners to gaol.

58. The constable or any of the constables, or other persons to whom any warrant of commitment authorized by this or any other act is directed, shall

convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the warrant, to the gaoler, keeper or governor of such gaol or prison, who shall thereupon give the constable or other person delivering the prisoner into his custody a receipt (T 2) for such prisoner, setting forth the state and condition of the prisoner when delivered into the custody of such gaoler, keeper or governor.

As to payment of costs for the same.

59. In all cases in Lower Canada where such constable or other person is entitled to his costs or expenses for conveying such person to prison as aforesaid, the Justice or Justices who commit the accused party, or any Justice of the Peace in and for the territorial division wherein the offence is alleged in the said warrant to have been commttted may ascertain the sum which ought to be paid to such constable or other person for arresting and conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning, and thereupon such Justice shall make an order (T 2) upon the sheriff for the territorial division within which the the offence is alleged to have been committed, for payment to such constable or other person of the sums so ascertained to be payable to him in that behalf; and the said sheriff, upon such order being produced to him shall pay the amount thereof to such constable or other person producing the same, or to any person who produces the same to him for payment.

When and how defendant may be entitled to a copy of depositions.

60. At any time after all the examinations aforesaid have been completed, and before the first day of the sessions, or other first sitting of the court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person

may require and shall be entitled to have from the officer or person having custody of the same, copies of the depositions on which he has been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of five cents for each folio of one hundred words.

Powers of Inspectors of police, &c.

61. Any one inspector and superintendent of police, any police magistrate or stipendiary magistrate, appointed for any territorial division, may do alone whatever is authorized by this Act to be done by any two or more Justices of the Peace, and the several forms in this Act contained, may be varied so far as necessary to render them applicable to such inspector and superintendent of police, or to such police magistrate or stipendiary magistrate.

Duty of coroner.

62. Every coroner, upon any inquisition taken before him, whereby any person is indicted for manslaughter or murder, or as an accessory to murder before the fact, shall in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as may be material, giving the party accused full opportunity of cross-examination; and the coroner shall have authority to bind by recognizance all such persons as know or declare anything material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer or gaol delivery, or other court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the county attorney of the county, or to the proper officer of the court, at the time and in the manner specified in the thirty-ninth section of this act.

When party committed wishes to be bailed, the Justices, on notice thereof, to forward all information to Clerk of the Crown.

33. When and so often as any person has been committed for trial by any Justice or Justices, or coroner as aforesaid, such prisoner, his counsel, attorney or agent may notify the said committing Justice or Justices, or coroner, that he will, so soon as counsel can be heard, move one of Her Majesty's courts of superior criminal jurisdiction for that part of the Province in which such person stands committed, or one of the judges thereof, or in Lower Canada a judge of the Superior Court, or in Upper Canada the judge of the county court, if it is intended to apply to such judge under the fifty-fourth section of this Act, for an order to the Justices of the Peace, or coroner for the territorial division where such prisoner is confined, to admit such prisoner to bail, whereupon such committing Justice or Justices, or coroner, shall, with all convenient expedition, transmit to the office of the Clerk of the Crown, or the chief clerk of the court, or the clerk of the county court (as the case may be) close under the hand and seal of one of them, a certified copy of all informations, examinations and other evidences, touching the offence wherewith such prisoner has been charged, together with a copy of the warrant of commitment and inquest, if any such there be, and the packet containing the same shall be handed to the person applying therefor, in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question.

Same order to be made as upon *habeas corpus*.

64. Upon application to any of Her Majesty's courts of superior criminal jurisdiction for that part of the Province within which such person stands committed, or to any judge thereof, the same order touching the prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a *habeas corpus*.

Penalty on Justices and Coroners.

65. If any Justice or coroner neglects or offends in anything contrary to the true intent and meaning of any of the provisions of the sixty-second and following sections of this Act, the court to whose officer any such examination, information, evidence, bailment recognizance or inquisition ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, set such fine upon every such Justice or coroner as the court thinks meet.

Provisions to apply to all Justices and Coroners.

66. The provisions of this Act relating to Justices and coroners shall apply to the Justices and coroners not only of districts and counties at large, but also of all other territorial divisions and jurisdictions.

67. The several forms in the schedule to this Act contained, or forms to the like effect, shall be good, valid and sufficient in the law; and the word "district" as used therein is intended to apply to Lower Canada, and the words "county" or "united counties" to Upper Canada.

FORMS

REFERRED TO IN THE FOREGOING ACT.

(A) *Vide ss.* 1 *and* 8.

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

The information and complaint of C. D., of ——— (*yeoman*) taken ——— day of ——— in the year of our Lord ——— before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county*, as the case may be) of ——— who saith that (*&c., stating the offence*).

Sworn before (*me*) the day and year first above mentioned, at ——

J. S.

(B) *See ss.* 1, 18.

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the district (or *county, united counties, or as the case may be*) of ———

Whereas, A. B., of ——— (*laborer*) hath this day ——— been charged upon oath before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that he, on ——— at ——— did (*&c., stating shortly the offence*): These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— to answer unto the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal this —— day of —— at —— in the district (*county, &c.*) aforesaid.

J. S. [L. S.]

(C) *See ss.* 2, 12.

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To A. B., of ——— (*laborer*).

Whereas, you have this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county*,

united counties, or as the case may be) of ——— for that you on ——— at ——— (*&c., stating shortly the offence*): These are therefore to command you, in Her Majesty's name, to be and appear before (*me*) on ——— at ——— o'clock in the (*fore*) noon, at ——— or before such other Justice or Justices of the Peace of the same district (or *county, united counties, or as the case may be*) of ——— as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(D) *See ss.* 2, 15.

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas on the ——— day of ——— (*instant or last past*) A. B. of the ——— was charged before (me *or* us) the undersigned (*or name the magistrate or magistrates, as the case may be*), (*one*) of Her Majesty's Justices of the Peace in and for the said district, (or *county, united counties, or as the case may be*) of ——— for that (*&c., as in the summons*); and whereas (*I, he, the said Justice of the Peace, we or they, the said Justices of the Peace*) then issued (*my, our, his* or *their*) summons to the said A. B., commanding him, in Her Majesty's name, to be and appear before (*me*) on ——— at ——— o'clock in the (*fore*) noon at ——— or before such other Justice or Justices of the Peace as should then be there, to answer to the said charge, and to be further dealt with according to law; and whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to (*me*) upon oath, that the said summons was duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— to answer the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal this —— day of —— in the year of our Lord —— at —— in the district (*county*) of —— aforesaid.

J. S. [L. S.]

(E 1) *See s.* 11.

INFORMATION TO OBTAIN A SEARCH WARRANT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

The information of A. B., of the ——— of ——— in the said district (or *county, &c.*) (*yeoman*) taken this ——— day of ——— in the year of our Lord ——— before me, W. S., Esquire, one of Her Majesty's Justices of the Peace in and for the district (or *county, united counties, or as the case may be*) of ——— who saith that on the ——— day of ——— (*insert description of articles stolen*) of the goods and chattels of deponent, were feloniously stolen, taken and carried away, from and out of the (*dwelling*

house, &c.) of this deponent, at the (*township, &c,*) aforesaid (by some person or persons unknown, *or name the person*) and that he hath just and reasonable cause to suspect and doth suspect that the said goods and chattels, or some part of them, are concealed in the (*dwelling house, &c., of C. D.*) of ——— in the said district, (or *county*) (*here add the causes of suspicion whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to him to search (*the dwelling house, &c.*) of the said C. D. as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn before me the day and year first above mentioned, at —— in the said district (or *county*) of ——

W. S., *J. P.*

(E 2) *See s.* 11.

SEARCH WARRANT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables, or other peace officers in the district (or *county, united counties, or as the case may be*) of ———

Whereas, A. B., of the ——— of ——— in the said district (*county, &c.*) hath this day made oath before me the undersigned, one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties or as the case may be*) of ——— that on the ——— day of ——— (*copy information as far as place of supposed concealment*): These are therefore in the name of our Sovereign Lady the Queen, to authorize and require you and each and every of you with necessary and proper assistance, to enter in the day time into the said (*dwelling house, &c.*, of the said, &c.) and there diligently search for the said goods and chattels, and if the same or any part thereof shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, or some other Justice of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— to be disposed of and dealt with according to law.

Given under my hand and seal at —— in the said district (*county, &c.*) this —— day of —— in the year of our Lord one thousand eight hundred and ——

W. S., *J. P.* [SEAL].

(F) *See s.* 8.

CERTIFICATE OF INDICTMENT BEING FOUND.

I hereby certify that at a court of (oyer and terminer *or* general gaol delivery *or* general sessions of the peace) holden in and for the district (or *county, united counties, or as the case may be*) of ——— at ——— in the said district (*county, &c.*) on ——— a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of ——— (*laborer*) for that he (*&c., stating shortly the offence*) and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this —— day of —— one thousand eight hundred and ——

Z. X.,

Clerk of the Crown or deputy clerk of the Crown for the district or (*county united counties or as the case may be*) *or*

Clerk of the Peace of and for the said district (or *county, united counties, or as the case may be*).

(G) *See s.* 3.

WARRANT TO APPREHEND A PERSON INDICTED.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas it hath been duly certified by J. D., clerk of the Crown of (*name the court*) (*or* E. G., deputy clerk of the Crown, *or* Clerk of the Peace, *as the case may be*) in and for the district (or *county, united counties, or as the case may be*) of ——— that (*&c., stating the certificate*): These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other Justice or Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) to be dealt with according to law.

Given under my hand and seal this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(H) *See s.* 4.

WARRANT OF COMMITMENT OF A PERSON INDICTED.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, &c.*) of ——— and to the keeper of the common gaol at ——— in the said district (or *county, united counties, or as the case may be*) of ——

Whereas, by a warrant under the hand and seal of ——— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— under ——— hand and seal — dated ——— the ——— day of ——— after reciting that it had been certified by J. D. (*&c., as in the certificate*) (———) the said Justice of the Peace commanded all or any of the constables, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said Justice of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— or before some other Justice or Justices in and for the said district (or *county, united counties, or as the case may be*) to be dealt with according to law; and whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged by ——— in the said indictment: These are therefore to command you, the said constables and peace officers, or any of you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at ——— in the said district (or *county, united counties, or as the case may be*) of ——— and there deliver him to the keeper thereof, together with this precept; and (*I*) hereby command you the said keeper to receive the said A. B. into your custody in the said gaol, and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(I) *See s.* 5.

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To the keeper of the common gaol at ——— in the said district (or *county united counties, or as the case may be*) of ———

Whereas it hath been duly certified by J. D., clerk of the Crown of (*name the court*) *or* deputy clerk of the Crown *or* Clerk of the Peace of and for the district (or *county, united counties, or as the case may be*) of ——— that (*&c., stating the certificate*); and whereas (*I am*) informed that the said A. B. is in your custody in the said common gaol at ——— aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before (*me*) that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by Her Majesty's writ of *habeas corpus* he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under (*my*) hand and seal this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(K) *See s.* 24.

ENDORSEMENT IN BACKING A WARRANT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Whereas, proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— that the name of J. S., to the within warrant subscribed, is of the handwriting of the Justice of the Peace within mentioned: I do therefore hereby authorise W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers of the said district (or *county, united counties, or as the case may be*) of ——— to execute the same within the said last mentioned district (or *county, united counties, or as the case may be*).

Given under my hand this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. L.

(L 1) *See s.* 26.

SUMMONS TO A WITNESS.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To E. F., of ——— (*laborer*).

Whereas, information hath been laid before the undersigned, one of Her Majesty's Justices of the Peace in and for the said district (or *county,*

united counties, or as the case may be) of ——— that A. B. (*&c., as in the summons or warrant against the accused*) and it hath been made to appear to me upon (*oath*) that you are likely to give material evidence for (*prosecution*): These are therefore to require you to be and appear before me on ——— next at ——— o'clock in the (*fore*) noon at ——— or before such other Justice or Justices of the Peace of the same district (or *county, united counties, or as the case may be*) of ——— as may then be there, to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal this —— day of —— in the year of our Lord —— at —— in the district (*county, &c.*) aforesaid.

J. S. [L. S.]

(L 2) *See. s.* 27.

WARRANT WHEN A WITNESS HAS NOT OBEYED A SUMMONS.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables, or other peace officers, in the said district (or *county, united counties, or as the case may be*) of ———

Whereas information having been laid before ——— (*one*) of Her Majesty's Justices of the Peace, in and for the said district (*county, &c.*) of ——— that A. B., *&c.* (*as in the summons*); And it having been made to appear to (*me*) upon oath that E. F. of ——— (*labourer*), was likely to give material evidence for the prosecution, (*I*) did duly issue (my) summons to the said E. F., requiring him to be and appear before (*me*) on —— at ——— or before such other Justice or Justices of the Peace for the same district, (or *county, united counties, or as the case may be,*) as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid; And whereas proof hath this day been made upon oath before (*me*) of such summons having been duly served upon the said E. F.; and whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect; these are therefore to command you to bring and have the said E. F. before (*me*) on ——— at ——— o'clock in the (*fore*) noon, at ——— or before such other Justice or Justices for the same district (or *county, united counties, or as the case may be*) as may then be there, to testify what he shall know concerning the said charges so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (*county, &c.*) aforesaid.

J. S. [L. S.]

(L 3) *See s.* 28.

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas, information hath been laid before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united*

counties, or as the case may be) of ——— that (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F., of ——— (*laborer*) is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so: These are therefore to command you to bring and have the said E. F. before (*me*) on ——— at ——— o'clock in the (*fore*) noon, at ——— or before such other Justice or Justices of the Peace for the same district (or *county, united counties, or as the case may be*) as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(L 4) *See s.* 29.

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE EVIDENCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the district (or *county, united counties, or as the case may be*) of ——— and to the keeper of the common gaol at ——— in the said district (or *county, united counties, or as the case may be*) of ———

Whereas, A. B. was lately charged before ——— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties or as the case may be*) of ——— for that (*&c., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F., of ——— was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before me on ——— at ——— or before such other Justice or Justices of the Peace for the same district (or *county, united counties, or as the case may be*) as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf, to testify as aforesaid) and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do (*or* being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are now here put to him, and more particularly the following ——— without offering any just excuse for such refusal: These are therefore to command you, the said constables, peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at ——— in the district (or *county, &c.*) aforesaid, and there to deliver him to the keeper thereof, together with this precept; and (*I*) do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of ——— days, for his said contempt, unless he shall in the meantime consent to be examined, and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under (*my*) hand and seal this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(M) *See s.* 30.

DEPOSITIONS OF WITNESSES.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

The examination of C. W., of ——— (*farmer*) and E. F., of ——— (*laborer*), taken on (*oath*) this ——— day of ——— in the year of our Lord ——— at ——— in the district (*county, or as the case may be*) aforesaid, before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*) in the presence and hearing of A. B. who is charged this day before (*me*) for that he, the said A. B. ——— at ——— (*&c., describing the offence as in a warrant of committment.*)

This Deponent, C. D. upon his (*oath*) saith as follows: (*&c. stating the depositions of the witness as nearly as possible in the words he uses. When his deposition is complete, let him sign it.*)

And this deponent, E. F., upon his (*oath*) saith as follows: (*&c.*)

The above depositions of C. D. and E. F. were taken and (*sworn*) before me, at ——— on the day and year first above mentioned.

J. S.

(N) *See s.* 32.

STATEMENT OF THE ACCUSED.

Province of Canada, District (or *county, united counties, or as the case may* be) of ———

A. B. stands charged before the undersigned, (*one*) of Her Majesty's Justices of the Peace, in and for the district (or *county, united counties, or as the case may be*) aforesaid, this ——— day of ——— in the year of our Lord ——— for that the said A. B., on ——— at ——— (*&c. as in the caption of the depositions*); And the said charge being read to the said A. B. and the witnesses for the prosecution, C. D. and E. F. being severally examined in his presence, the said A. B. is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer "to the charge? You are not obliged to say anything, unless you desire "to do so; but whatever you say will be taken down in writing, and may "be given against you at your trial." Whereupon the said A. B. saith as follows: (*Here state whatever the prisoner may say, and in his very words as nearly as possible. Get him to sign it if he will.*)

A. B.

Taken before me, at ——— the day and year first above mentioned.

J. S.

(O 1) *See s.* 37.

RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on the ——— day of ——— in the year of our Lord ——— C. D. of ——— in the (*township*) of ——— in the said district (or *county, &c.*) of ——— (*farmer*), (or C. D. of No. 2 ——— street, ——— in the town *or* city of ——— *surgeon*), of which said house he is

(*tenant*), personally came before me, one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be* of ——— and acknowledged himself to owe to our Sovereign Lady the Queen the sum of ——— of good and lawful current money of this province, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he the said C. D. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at ——— before me.

J. S.

CONDITION TO PROSECUTE.

The condition of the within (*or* above) written recognizance is such, that whereas one A. B. was this day charged before me J. S. Justice of the Peace within mentioned, for that (*&c. as in the caption of the depositions*); if, therefore, he the said C. D. shall appear at the next court of oyer and terminer *or* general gaol delivery, (*or* at the next court of General *or* Quarter Sessions of the Peace), to be holden in and for the district (or *county, united counties or as the case may be*) of ———,* and there prefer or cause to be preferred a Bill of Indictment for the offence aforesaid, against the said A. B. and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

CONDITION TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form, to the asterisk,* and then thus:*—"And there "prefer or cause to be preferred a bill of indictment against the said A. B. "for the offence aforesaid, and duly prosecute such indictment, and give "evidence thereon, as well to the Jurors who shall then enquire into the "said offence, as also to them who shall pass upon the trial of the said "A. B., then the said Recognizance to be void, or else to stand in full force "and virtue."

CONDITION TO GIVE EVIDENCE.

(*Same as the last form but one, to the asterisk*, and then thus*): "And "there give such evidence as he knoweth upon a bill of indictment to be "then and there preferred against the said A. B. for the offence aforesaid, "as well to the jurors who shall there enquire of the said offence, as also to "the jurors who shall pass upon the trial of the said A. B., if the said bill "shall be found a true bill, then the said recognizance to be void, other-"wise to remain in full force and virtue."

(O 2) *See s.* 38.

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE PROSECUTOR AND HIS WITNESS.

Province of Canada, District (or *County, United Counties, or as the case may be*) of ———

Take notice that you C. D. of ——— are bound in the sum of ——— to appear at the next court of oyer and terminer and general gaol delivery, (*or* at the next Court of General Quarter Sessions of the Peace, in and for the district, (or *county, united counties, or as the case may be*) of ——— to be holden at ——— in the said district (*county, &c.*) and then and

there (*prosecute and*) give evidence against A. B., and unless you then appear there, (*prosecute*) and give evidence accordingly, the recognizance entered into by you will be forthwith levied on you.

Dated this —— day of —— one thousand eight hundred and ——

J. S.

(P 1) *See s.* 40.

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, &c.*) of ——— and to the keeper of the common gaol of the said District, (or *county, united counties, or as the case may be,*) at ——— in the said district (or *county, or as the case may be*) of———:

Whereas, A. B. was lately charged before the undersigned, (*or name of Justice of the Peace*) (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, &c.*) of ——— for that (*&c. as in the summons to the witness*) and it having been made to appear to (*me*) upon oath that E. F. of ——— was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on ——— at ——— or before such other Justice or Justices of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before *me*) (or being brought before [*me*] by virtue of a warrant in that behalf to testify as aforesaid) hath been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a recognizance conditioned to give evidence against the said A. B., hath now refused so to do; these are therefore to command you the said constables or peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at ——— in the district (or *county, &c.*) aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid unless in the meantime the said E. F. shall duly enter into such recognizance as aforesaid, in the sum of ——— before some one Justice of the Peace for the said district, (or *county, united counties, or as the case may be*) conditioned in the usual form to appear at the next court of (oyer and terminer, *or* general gaol delivery, *or* general quarter sessions of the peace) to be holden in and for the said district (or *county, united counties, or as the case may be*) of ——— and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) of —— aforesaid.

J. S. [L. S.]

(P 2) *See s.* 41.

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To the keeper of the common gaol at ——— in the district (or *county, &c.*) of ——— aforesaid ———:

Whereas by (*my*) order dated the ——— day of ——— (*instant*) reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F. having appeared before (*me*) and being examined as a witness for the prosecution in that behalf, refused to enter into recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid; And whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody; These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) of —— aforesaid.

J. S. [L. S.]

(Q 1) *See s.* 42.

WARRANT REMANDING A PRISONER.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ——— and to the keeper of the (*common gaol* or *lock-up house*) at ——— in the said district (or *county, &c.*) of ———.

Whereas, A. B. was this day charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*&c., as in the warrant to apprehend*) and it appears to (*me*) to be necessary to remand the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to convey the said A. B. to the (*common gaol* or *lock-up house*) at ——— in the said district (or *county, &c.*) and there to deliver him to the keeper thereof, together with this precept; and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said (*common gaol* or *lock-up house*) and there safely keep him until the ——— day of ——— (*instant*) when I hereby command you to have him at ——— at ——— o'clock in the (*fore*) noon of the same day before (*me*) or before some other Justice or Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as may then be there, to answer

further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(Q 2) *See s.* 45.

RECOGNIZANCE OF BAIL INSTEAD OF REMAND, ON AN ADJOURNMENT OF EXAMINATION.

Province of Canada, District (or *county, united counties, or as the case may be*) of ——

Be it remembered, that on the —— day of —— in the year of our Lord —— A. B., of —— (*laborer*) L. L., of —— (*grocer*) and N. O. of —— (*butcher*) personally came before me (*one*) of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*) and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say: the said A. B. the sum of —— and the said L. M. and N. O. the sum of —— each, of good and lawful current money of this Province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at —— before me.

J. S.

CONDITION.

The condition of the within written recognizance is such, that whereas the within bounden A. B. was this day (*or on —— last past*) charged before me, for that (*&c., as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the —— day of —— (*instant*); if, therefore, the said A. B. shall appear before me on the said —— day of —— (*instant*) —— at —— o'clock in the forenoon, or before such other Justice or Justices of the Peace for the said district (or *counties, united counties*) of —— (*as the case may be*) as may then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q 3) *See s.* 45.

NOTICE OF RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS SURETIES.

Province of Canada, District (or *county, united counties, or as the case may be*) of ——

Take notice, that you A. B., of —— are bound in the sum of —— and your sureties L. M. and N. O. in the sum of —— each, that you A. B. appear before me, J. S., one of Her Majesty's Justices of the Peace for the district (or *county, united counties, or as the case may be*) of —— on

——— the ——— day of ——— (*instant*) at ——— o'clock in the (*fore*) noon, at ——— or before such other Justice or Justices of the same district (or *county, united counties, or as the case may be*) as may then be there, to answer (*further*) to the charge made against you by C. D., and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the recognizances, entered into by yourself and sureties will be forthwith levied on you and them.

Dated this —— day of —— one thousand eight hundred and ——

J. S.

(Q 4) *See s.* 46.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE RECOGNIZANCE.

I hereby certify that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S.

(R 1) *See s.* 48.

WARRANT TO CONVEY THE ACCUSED BEFORE A JUSTICE OF THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas, A. B., of ——— (*laborer*) hath this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the district (or *county, united counties or as the case may be*) of ——— for that (*&c., as in the warrant to apprehend*); and whereas (*I*) have taken the deposition of C. D., a witness examined by (*me*) in this behalf, but inasmuch as (*I*) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the district (or *county, united counties, or as the case may be*) of ——— where the said offence is alleged to have been committed: These are therefore to command you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said district (or *county, united counties, or as the case may be*) of ——— and there carry him before some Justice or Justices of the Peace in and for that district (or *county, united counties, or as the case may be*) and near unto the (*Township of* ———) where the offence is alleged to have been committed, to answer further to the said charge against him or them, and to be further dealt with according to law; and (*I*) hereby further command you to deliver to the said Justice or Justices the information in this behalf, and also the said deposition of C. D., now given into your possession for that purpose, together with this precept.

Given under my hand and seal this —— day of —— in the year of our Lord —— at —— in the district (*county, &c.*) of —— aforesaid.

J. S. [L. S.]

(R 2) *See s.* 50.

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

I, J. P., one of Her Majesty's Justices of the Peace in and for the district (or *county, &c.*) of ——— hereby certify that W. T., constable *or* peace officer of the district (or *county, united counties, or as the case may be*) of ——— has on the ——— day of ——— one thousand eight hundred and ——— by virtue of and in obedience to a warrant of J. S., Esquire, one of Her Majesty's Justices of the Peace in and for the district (or *county, united counties, or as the case may be*) of ——— produced before me one A. B., charged before the said J. S. with having (*&c., stating shortly the offence*) and delivered him into the custody of ——— by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of* ———) in the said warrant mentioned, and that he has also proved to me upon oath the handwriting of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at —— in the said district (*county, &c.*) of ——

J. P.

(S 1) *See s.* 52.

RECOGNIZANCE OF BAIL.

Province of Canada, District (*county, united counties, or as the case may be*) of ———

Be it remembered that on the ——— day of ——— in the year of our Lord ——— A. B., of ——— (*laborer*) L. M., of ——— (*grocer*) and N. O., of ——— (*butcher*) personally came before (*us*) the undersigned, two of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*) and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say, the said A. B. the sum of ——— and the said L. M. and N. O. the sum of ——— each, of good and lawful current money of this Province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B., fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at —— before us.

J. S.
J. N.

CONDITION.

The condition of the within written recognizance is such, that whereas the said A. B. was this day charged before (*us*) the Justices within mentioned, for that (*&c., as in the warrant*); if, therefore, the said A. B. will appear at the next court of oyer and terminer *or* general gaol delivery *or*

court of general quarter sessions of the peace, to be holden in and for the district (or *county, united counties or as the case may be*) of ——— and there surrender himself into the custody of the keeper of (*common gaol* or *lock-up house*) there, and plead to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid, and take his trial upon the same, and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

(S 2) *See s.* 52.

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS BAIL.

Take notice that you A. B., of ——— are bound in the sum of ——— and your sureties (*L. M.* and *N. O.*) in the sum of ——— each, that you A. B. appear (*&c., as in the condition of the recognizance*) and not depart the said court without leave; and unless you, the said A. B., personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this —— day of —— one thousand eight hundred and ——

J. S.

(S 3) *See ss.* 54, 56.

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Province of Canada, District (*county, united counties, or as the case may be*) of ———

To the keeper of the common gaol of the district (or *county, united counties, or as the case may be*) at ——— in the said district (or *county, united counties, or as the case may be*) at ———

Whereas, A. B., late of ——— (*laborer*) hath before (*us*) (*two*) of Her Majesty's Justices of the Peace in and for the said district (*county, united counties, or as the case may be*) of ——— entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer *or* general gaol delivery, *or* court of general quarter sessions of the peace, to be holden in and for the district (or *county, united counties, or as the case may be*) of ——— to answer our Sovereign Lady the Queen, for that (*&c., as in the commitment*) for which he was taken and committed to your said common gaol: These are therefore to command you in Her said Majesty's name, that if the said A. B. do remain in your custody in the said common gaol for the said cause and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) of —— aforesaid.

J. S. [L. S.]
J. N. [L. S.]

(T 1) *See s.* 57.

WARRANT OF COMMITMENT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables, or other peace officers, in the district (or *county, united counties, or as the case may be*) of ——— and to the keeper of the common gaol of the district (or *county, united counties, or as the case may be*) at ——— in the said district (or *county, &c.*) of ———

Whereas A. B. was this day charged before (*me*) J. S. (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— on the oath of C. D. of ——— (*farmer*) and others, for that, (*&c., stating shortly the offence*); These are therefore to command you the said constables or peace officers, or any of you, to take the said A. B., and him safely convey to the common gaol at ——— aforesaid, and there deliver him to the Keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, and there safely to keep him until he shall be thence delivered in due course of law.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) of —— aforesaid.

J. S. [L. S.]

(T 2) *See ss.* 58, 59.

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER, AND JUSTICE'S ORDER THEREON FOR THE PAYMENT OF THE CONSTABLE'S EXPENSES IN EXECUTING THE COMMITMENT.

I hereby certify that I have received from W. T., constable of the district (or *county, &c.*) of ——— the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, one of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*) of ——— and that the said A. B. was sober, (*or as the case may be*) at the time he was delivered into my custody.

P. K.

Keeper of the common gaol of the said District (or *county, &c.*) —— at ——

To R. W. Esquire, treasurer of the district (or *county, united counties, or as as the case may be,*) of ———:

Whereas W. T., constable, of the district (or *county, united counties, or as the case may be*) of ——— hath produced unto me, J. P. one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— the above receipt of P. K., keeper of the common gaol at ———; And whereas in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said W. T. for arresting and conveying the said A. B. from ——— in the district (or *county, &c.*) of ——— to the said common

gaol is ——— and that the reasonable expenses of the said W. T. in returning, will amount to the further sum of ——— making together the sum of ———; These are therefore to order you, as such treasurer for the said district (or *county, united counties, or as the case may be*) of ——— to pay unto the said W. T. the said sum of ——— according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this —— day of —— one thousand eight hundred and ——

J. P.

Received, the ——— day of ——— one thousand eight hundred and ——— of the treasurer of the district (or *county, united counties, or as the case may be*) of ——— the sum of ——— being the amount of the above order.

$—— ——cts.

W. T.

DUTIES OF JUSTICES OF THE PEACE.

CONSOL. STAT. CANADA, CAP. CIII.

AN ACT RESPECTING THE DUTIES OF JUSTICES OF THE PEACE, OUT OF SESSIONS, IN RELATION TO SUMMARY CONVICTIONS AND ORDERS.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Where an information is laid, &c., before a Justice of the Peace, &c., such Justice may issue a summons to such party.

1. In all cases where an information is laid before one or more of Her Majesty's Justices of the Peace for any Territorial Division of this Province, that any person has committed, or is suspected to have committed, any offence or act within the jurisdiction of such Justice or Justices, for which he is liable by law, upon a summary conviction for the same before a Justice or Justices of the Peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint is made to any such Justice or Justices, upon which he or they have authority by law to make any order for the payment of money or otherwise, such Justice or Justices of the Peace may issue his or their summons (A), directed to such person, stating shortly the matter of the information or complaint, and requiring him to appear, at a certain time and place, before the same Justice or Justices, or before such other Justice or Justices of the same Territorial Division as may then be there, to answer to the said informa-

tion or complaint, and to be further dealt with according to law.*

How summons to be served.

2. Every such Summons shall be served by a Constable or other Peace Officer, or other person to whom the same may be delivered, upon the person to whom it is directed, by delivering the same to the party personally, or by leaving it with some person for him at his last or most usual place of abode.

Constables to attend to depose, &c.

3. The constable, peace officer, or person who serves the same, shall attend at the time and place, and before the Justices, in the said summons mentioned, to depose, if necessary, to the service thereof.

Justices not obliged in certain cases to issue summons.

4. But nothing hereinbefore contained shall oblige any Justice or Justices of the Peace to issue any

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* From this section it will be seen that when an order for the payment of money or otherwise is sought, the preliminary step is called a "complaint," while the same step is called an "information" when it relates to any offence which renders the party convicted of such offence liable to fine or imprisonment.

Where the statute under which the complaint or information is laid, in describing the offence, contains the words "maliciously," "knowingly," "unlawfully," or words of similar import, it should be inserted in the information, that the defendant committed the offence "maliciously," &c., as the case may be; and if there be any *exemption* or *exception* in the clause under which the offence is charged, and which must necessarily be read as a part thereof, it is requisite to negative such exemption or exception as applicable to the defendant.

Under some particular cases (cruelty to animals, for instance) an information is not necessary to commence proceedings, in consequence of there being an express dispensation relative thereto; but in practice it is usual, and certainly more correct, for Justices in all cases to require an information in writing and on oath before they will issue a summons. An information may properly be dispensed with in those cases where Justices are authorized to convict upon their own view of the commission of an offence.

In issuing a summons, Justices should always be careful to allow sufficient time before its return to enable the defendant to prepare his defence, and procure the attendance of any witnesses on his behalf. In practice it is customary (except under special circumstances) to allow a defendant one whole day, at the least, between the service of the summons and the hearing. But the defendant is bound not only to attend at the precise hour appointed, but to wait until the Justice is ready to hear the case, during all reasonable hours of the same day.

The summons is generally, in practice, made out in duplicate, both of which are signed and sealed by the Justice, and delivered to the constable, peace officer, or person directed to serve it. One of these is served on the defendant by delivering it to him personally, or by leaving it with *some person* for him at his last or most usual place of abode; the other is endorsed by the person who served the summons, with a memorandum of service, and retained by him for production at the hearing of the case.

such summons in any case where the application for any order of Justices is by law to be made *ex parte*.

No objection allowed for want of form.

5. No objection shall be allowed to any information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint; but if any such variance appear to the Justice or Justices present and acting at such hearing, to be such that the person summoned and appearing has been thereby deceived or misled, such Justice or Justices may, upon such terms as he or they think fit, adjourn the hearing of the case to a future day.

If summons not obeyed, Justice may issue warrant, &c.

6. If the person served with a summons does not appear before the Justice or Justices at the time and place mentioned in such summons, and it be made to appear to such Justice or Justices, by oath or affirmation, that such summons was duly served, what the Justice or Justices deem a reasonable time before the time therein appointed for appearing to the same, then such Justice or Justices, upon oath or affirmation being made before him or them, substantiating the matter of such information or complaint to his or their satisfaction, may, if he or they think fit, issue his or their warrant (B) to apprehend the party so summoned, and to bring him before the same Justice or Justices, or before some other Justice or Justices of the Peace in and for the same territorial division, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction, the Justice or Justices before whom such information is laid, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their

satisfaction, may, if he or they think fit, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C) for apprehending the person against whom such information has been so laid, and bringing him before the same Justice or Justices, or before some other Justice or Justices of the Peace, in and for the same territorial division, to answer to the said information, and to be further dealt with according to law.*

Or if the summons having been duly served, &c., be not obeyed, the Justice may proceed *ex parte*.

7. If where a summons has been issued as aforesaid, and upon the day and at the place therein appointed for the appearance of the party so summoned, the party fails to appear in obedience to the summons, then if it be proved upon oath or affirmation to the Justice or Justices present, that a summons was duly served upon the party a reasonable time before the time appointed for his appearance, such Justice or Justices of the Peace may proceed *ex parte* to the hearing of such information or complaint, and adjudicate thereon, as fully and effectually to all intents and purposes, as if the party had personally appeared before him or them in obedience to the said summons.

Warrant to be under hand and seal of Justice.

8. Every warrant to apprehend a defendant, that he may answer to an information or complaint as aforesaid, shall be under the hand and seal, or hands

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* It will thus be seen from the latter part of the preceding section, that the Justice may issue a warrant to apprehend the defendant in the case either of a *complaint* or *information*, if he does not appear in answer to the summons, but a warrant to apprehend in the first instance, can only be granted in the case of an information. And the officer or other person executing a warrant of apprehension must have it in his possession at the time, in order that he may produce it, if required to do so by the person arrested. If the officer has not the warrant with him he is not justified in making the arrest under it. (*Galliard* v. *Lanton*, 31 L. J. M. C. 123).

Whenever a warrant is issued to take a defendant into custody, it is incumbent on the Justice so to arrange with the peace officer, that the case may be brought to a hearing as soon as possible after the arrest; as it would be unjust, as well as illegal, to detain a party in custody for an unreasonable period, for any of those minor offences which are made cognizable before a Justice in a summary way.

and seals of the Justice or Justices issuing the same, and may be directed to all or any of the constables or other peace officers of the territorial division within which the same is to be executed, or to such constable and all other constables in the territorial division within which the Justice or Justices who issued such warrant hath or have jurisdiction, or generally to all the constables within such last mentioned territorial division, and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other peace officer to whom it is directed, to apprehend the defendant, and to bring him before one or more Justice or Justices of the Peace, of the same territorial division, as the case may require, to answer to the said information or complaint, and to be further dealt with according to law.

It need not be returnable at any particular time.

9. It shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until executed; and such warrant may be executed by apprehending the defendant at any place in the territorial division within which the Justices who issued the same have jurisdiction, or in case of fresh pursuit, at any place within the next adjoining territorial division, within seven miles of the border of such first mentioned territorial division, without having such warrant backed as hereinafter mentioned.

By whom warrant may be executed.

10. In all cases where the warrant is directed to all constables or peace officers in the territorial division within which the Justice or Justices who issued the same have jurisdiction, any constable or peace officer for any place within the limits of such jurisdiction, may execute such warrant in like manner as if the warrant was directed specially to such con-

stable by name, and notwithstanding that the place in which such warrant is executed be not within the place for which he is such constable or a peace officer.

Endorsement of warrant when taken into another jurisdiction, how performed, and its effects.

11. If the person against whom any such warrant has been issued be not found within the jurisdiction of the Justice or Justices by whom it is issued, or, if he escapes, goes into, resides, or is, or is supposed or suspected to be in any place within this Province, whether in Upper or Lower Canada, out of the jurisdiction of the Justice or Justices who issued the warrant, any Justice of the Peace within whose jurisdiction such person may be or be suspected to be, as aforesaid, upon proof upon oath of the handwriting of the Justice or Justices issuing the warrant, may make an endorsement upon it, signed with his name, authorizing the execution of the warrant within his jurisdiction; and such endorsement shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was originally directed, and to all constables or other peace officers of the territorial division wherein the endorsement has been made, to execute the same in any place within the jurisdiction of the Justice of the Peace endorsing the same, and to carry the offender, when apprehended, before the Justice or Justices who first issued the warrant, or some other Justice having the same jurisdiction.

No objection allowed for want of form in the warrant.

12. No objection shall be taken or allowed to any warrant issued as aforesaid, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant, but if it appears to the Justice or Justices present and acting at such hearing, that the party apprehended under such warrant has been deceived or misled by any such variance, such Justice or Justices may, upon such

terms as he or they think fit, adjourn the hearing of the case to some future day, and in the meantime commit (D) the said defendant to the common gaol, house of correction, lock-up-house, or other prison, or place of security within the territorial division or place wherein the said Justice or Justices may be acting, or to such other custody as the said Justice or Justices think fit, or may discharge him upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing is so adjourned.

Where a defendant is discharged on recognizance and fails to appear, &c.

13. In all cases where a defendant is discharged upon a recognizance as aforesaid, and does not afterwards appear at the time and place in such recognizance mentioned, the Justice who took such recognizance, or any Justice or Justices who may then be there present, having certified (F) upon the back of the said recognizance, the non-appearance of the defendant, may in Upper Canada transmit such recognizance to the Clerk of the Peace of the territorial division within which such recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the said defendant.

Description of property of partners, &c., in any information or complaint or proceedings thereon.

14. In any information or complaint, or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners or tenants-in-common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another, or others, as the case may be; and whenever, in any information or complaint, or the proceedings thereon, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners or tenants-in-com-

mon, it shall be sufficient to describe them in the manner aforesaid; and whenever, in any such information or complaint, or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained or repaired at the expense of any territorial division or place, or of any materials for the making, altering or repairing the same, they may be therein described as the property of the inhabitants of such territorial division or place.*

Abettors, &c., how punishable.

15. Every person who aids, abets, counsels or procures the commission of any offence which is punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as the principal offender, and may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.†

Power to Justices to summon witnesses to attend and give evidence.

16. If it be made to appear to any Justice of the Peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the prosecutor or complainant, or defendant, and will not voluntarily appear as a witness at the time and place appointed for the hearing of such information or complaint, such Justice shall issue his

* Where *quantity* or *value* are necessary parts of the case, the complaint or information should, of course, specify them as accurately as possible; and more particularly so where they become the measure of the penalty or compensation to be awarded by the convicting Justice.

† When several persons are joined in a charge, and found guilty, they must be separately convicted and fined; for otherwise, if one refused to pay his share, the others might have to pay the whole, or be imprisoned until the first had paid his fine; and a conviction imposing a joint fine will be bad.—*Morgan* v. *Brown*, 4 Ad. & E. 515.

summons (G 1) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the said Justice, or before such other Justice or Justices of the Peace for the said territorial division, as may then be there, to testify what he knows concerning the said information or complaint.

If summons be disobeyed, &c., Justice may issue warrant.

17. If any person so summoned neglects or refuses to appear at the time and place appointed by the said summons, and no just excuse be offered for such neglect or refusal, then, (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode), the Justice or Justices before whom such person should have appeared may issue a warrant (G 2) under his or their hands or seals, to bring and have such person, at a time and place to be therein mentioned, before the Justice who issued the said summons, or before such other Justice or Justices of the Peace for the same territorial division as may be then there, to testify as aforesaid; and which said warrant may, if necessary, be backed, as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the Justice who issued the same.

When Justice may issue his warrant in the first instance.

18. If such Justice be satisfied, by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled to do so, then instead of issuing a summons he may issue his warrant (G 3) in the first instance, and which if necessary may be backed as aforesaid.

Witnesses refusing to be examined may be committed.

19. If on the appearance of such person so summoned before the said last mentioned Justice or Justices, either in obedience to the summons or upon being brought before him or them, by virtue of the

said warrant, such person refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or, having taken such oath or affirmation, refuses to answer such questions concerning the premises as are then put to him, without offering any just excuse for such refusal, any Justice of the Peace then present, and having jurisdiction, may by warrant (G 4) under his hand and seal commit the person so refusing to the common gaol or house of correction for the territorial division where such person then is, there to remain and be imprisoned for any time not exceeding ten days, unless in the meantime he consents to be examined and to answer concerning the premises.*

Certain complaints must be in writing.

Exception.

20. In all cases of complaints upon which a Justice or Justices of the Peace may make an order for the payment of money or otherwise, such complaint shall be in writing and on oath (T), unless it be enacted or provided to the contrary by some particular act of Parliament, upon which such complaint is framed.

As to any variance between information, and the facts or evidence.

21. In all cases of informations for offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between such information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been commit-

* In all cases where persons are subpœnaed to give evidence before Justices of the Peace, in cases of assault, trespass or misdemeanor, the witness shall be entitled, *in the discretion of the Magistrates*, to receive at the rate of fifty cents for every day's attendance, where the distance travelled in *coming* to and *returning* from such adjudication does not exceed ten miles, and five cents for each mile above ten (Con. Stat. U. C. c.119, s. 13.)

ted, shall not be deemed material, provided the offence or act be proved to have been committed within the jurisdiction of the Justice or Justices by whom such information is heard and determined.*

If deemed material, Justice may adjourn the case.

22. If any such variance, or any other variance, between the information and the evidence adduced in support thereof, appears to the Justice or Justices present and acting at the hearing, to be such that the party charged by such information has been thereby deceived or misled, such Justice or Justices, upon such terms as he or they think fit, may adjourn the hearing of the case to some future day; and in the meantime commit (D) the said defendant to the common gaol, house of correction, or other prison, lock-up house, or place of security, or to such other custody as the said Justice or Justices think fit, or may discharge him upon his entering into a recognizance (E), with or without surety or sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing is adjourned.

In case the defendant is bailed and fails to appear afterwards.

What to be done.

In Upper Canada recognizance to be sent to Clerk of the Peace.

23. In all cases where a defendant has been discharged upon recognizance as aforesaid, and does not afterwards appear at the time and place in such recognizance mentioned, the said Justice who took the said recognizance, or any other Justice or Justices who may be there present, having certified (F) upon the back of the said recognizance the non-appearance of the defendant, may (in Upper Canada) transmit such recognizance to the Clerk of the Peace of the territorial division within which such recognizance was taken, to be proceeded upon in like manner as other recognizances; and such certificate

* When an information charged the defendant with having committed an offence on the 5th of October, and on divers other days and times between the said 5th of October and the laying the information (16th November), and the Justices committed him for committing the offence alleged on the 8th of November, it was held that the variance was immaterial (*Tuly* v. *Gee*, 30, L. J. M. C. 222.)

shall be deemed sufficient *prima facie* evidence of the non-appearance of the said defendant.

Complaint or information must be made upon oath except in certain cases.

24. All cases of complaint upon which a Justice or Justices of the Peace are authorized by law to make an order, and all cases of information for any offence or act punishable upon summary conviction, unless some particular Act of Parliament otherwise permits, shall be made or laid on oath or affirmation as to the truth thereof.*

And always where warrant is issued in the first instance, complaint or information to be for one matter only.

25. In all cases of informations, where the Justice or Justices receiving the same thereupon issue his or their warrant in the first instance, to apprehend the defendant as aforesaid; and in every case where the Justice or Justices issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorised in that behalf.

For information or complaint.

26. In all cases where no time is specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relat-

* The Justice, after reading the information over to the informant, and satisfying himself that the contents are properly understood by him, should cause him to sign it; and then giving him a Testament in his right hand, while the Justice taking the information, and holding it in his presence, should repeat the following form of oath:—"You, A. B., do swear that the contents of this information signed by you are true and correct. So help you God." After which the informant should kiss the book. If the informant should not be a Christian, the mode of swearing him must be varied according to his religious belief as noticed hereafter. If the informant is a Quaker, Menonist, or Tunker, or religiously objects to an oath, his solemn affirmation may be taken in place of the oath, but under similar liabilities if false.

ing to the particular case, such complaint shall be made and such information shall be laid, within three months from the time when the matter of such complaint or information arose.

As to the hearing of complaints and informations.

27. Every such complaint and information shall be heard, tried, determined and adjudged by one or two or more Justice or Justices of the Peace, as may be directed by the act or acts of Parliament upon which such complaint or information is framed, or by any other act or acts of Parliament in that behalf.*

If there be no such direction.

28. If there be no such direction in any act of Parliament, then such complaint or information may be heard, tried, determined and adjudged by any one Justice for the territorial district where the matter of such information or complaint arose.

To be deemed an open court.

29. The room or place in which such Justice or Justices sit to hear and try any such complaint or information, shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them.†

Defendant may make full defence, and produce witnesses.

30. The party against whom such complaint is made, or information laid, shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

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* Where the Statute makes no provision, the hearing may be before *one* Justice only.

† The majority of cases that come before Justices may be summarily disposed of by one Justice, at his private residence, and at any hour that may suit his convenience; but with the exception of cases of felony, where a Justice is merely acting *ministerially*, it is not very usual, and certainly not expedient, to hear cases in so private a manner. Indeed, as Justices are entrusted with the functions of both judge and jury, and must exercise their summary jurisdiction in a place to which the public may have reasonable access, it is more consonant with their object to dispense impartial justice for their judicial proceedings to be conducted with due solemnity and publicity; and it is therefore customary for them to hold their sittings in some convenient room, which may be resorted to by the public as an open court.

Prosecutor may be heard by counsel or attorney.

31. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

In case the defendant does not appear, &c.

32. If, at the day and place appointed in and by the summons aforesaid for hearing and determining the complaint or information, the defendant against whom the same has been made or laid does not appear when called, the constable or other person who served him with the summons shall declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of the Justice or Justices that he duly served the said summons, in that case such Justice or Justices may proceed to hear and determine the case in the absence of such defendant; or the said Justice or Justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of such complaint or information until the said defendant be apprehended.

When defendant has been apprehended, &c.

33. When the defendant has been apprehended under such warrant, he shall be brought before the same Justice or Justices, or some other Justice or Justices of the Peace for the same territorial division, who shall thereupon, either by his or their warrant (H), commit the defendant to the common gaol, house of correction, or other prison, lock-up house, or place of security; or, if he or they think fit, verbally to the custody of the constable or other person who apprehended him, or to such other safe custody as he or they deem fit; and may order the said defendant to be brought up, at a certain time and place, before such Justice or Justices; of which said order the complainant or informant shall have due notice.

If defendant appears, &c.

34. If, upon the day and at the place so appointed as aforesaid, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or be brought before the said Justice or Justices by virtue of a warrant, then, if the complainant or informant, having had due notice as aforesaid, does not appear by himself, his counsel or attorney, the Justice or Justices shall dismiss the complaint or information, unless for some reason he or they think proper to adjourn the hearing of the same until some other day, upon such terms as he or they think fit; in which case such Justice or Justices may commit (D) the defendant in the meantime to the common gaol, house of correction, or other prison, lock-up house or place of security, or to such other custody as such Justice or Justices think fit; or may discharge him upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing may be adjourned.

If defendant afterwards fails to appear, &c.

35. If the defendant does not afterwards appear at the time and place mentioned in his recognizance, then (in Upper Canada) the Justice who took the recognizance, or any Justice or Justices then there present, having certified (F) on the back of the recognizance the non-appearance of the defendant, may transmit the recognizance to the Clerk of the Peace for the territorial division in which the recognizance was taken, to be proceeded upon in like manner as other recognizances; and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the defendant.

If both parties appear, Justice to hear and determine the case.

36. If both parties, either personally or by their respective counsel or attorneys, appear before the Justice or Justices who are to hear and determine the complaint or information, then the said Justice

or Justices shall proceed to hear and determine the same.

Proceedings on the hearing of complaints and informations.

37. In case the defendant be present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

Justice may convict party if he admit the truth, &c.

38. If he thereupon admit the truth of the information or complaint, and show no cause, or no sufficient cause, why he should not be convicted, or why an order should not be made against him (as the case may be), the Justice or Justices present at the said hearing shall convict him or make an order against him accordingly.*

If he does not admit the truth, &c.

39. If he does not admit the truth of the information or complaint as aforesaid, the Justice or Justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce, in support of his information or complaint; and shall also hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence; and also hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant has examined any witnesses or given any evidence other than as to his (the defendant's) general character.†

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* Even where the particular statute under which the information is laid requires in terms that the offence be proved by the oath of one or more credible witnesses, it has been held that a defendant's confession is sufficient proof to satisfy the statute.

† Though it may not be absolutely necessary in all cases of summary conviction, yet it is highly expedient for the evidence to be carefully taken down, and then read over to and signed by the witnesses, as well as the Justice, and for such evidence to be filed with the original information. It is usual in Justices' courts for one of the magistrates to officiate as Chairman, and take the lead in the management of the business; and it tends much to the satisfaction of the Bench, as well as the suitors of the court, when such Chairman, from his habits of business, is able and willing to take down the evidence himself, with a due

Complainant or defendant not to make observations in reply upon the evidence, &c.

40. The prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant; nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply, as aforesaid.*

After hearing evidence, Justice to determine the matter.

41. The Justice or Justices, having heard what each party has to say, as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and, unless otherwise provided, determine the same, and convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be.†

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regard to the rules of evidence, and the nature and extent of the testimony required to substantiate the case.

It is material that the witnesses should be sworn and examined in the presence of the prisoner (or defendant, if he appear to the summons), that he may confront them and prepare himself to cross-examine them; and should a witness be examined in the absence of defendant, and the defendant afterwards appear, it will not be sufficient to read over the deposition in the defendant's presence, but the witness must also be re-sworn. (*R.* v. *Crowther*, 1 T. R. 125).

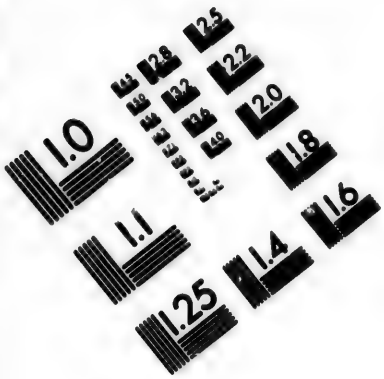
In the examination of witnesses Justices should be particularly careful neither to ask nor permit the asking of *leading* questions, so as to suggest favorable answers on their examination on behalf of the party who seeks the benefit of their testimony; neither should any *hear-say* answers be accepted as evidence.

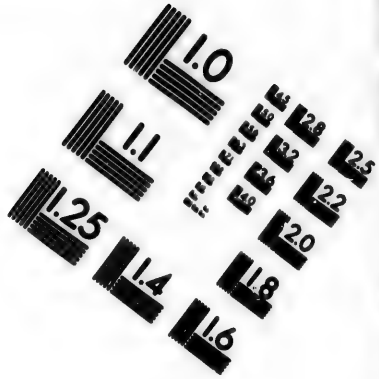
As the examination in chief of each witness for the prosecution is ended, the defendant should, in all cases of summary conviction, if present, be allowed and even invited to put questions to the witness, by way of cross-examination, with a view to elicit evidence in his own favor; and the prosecutor or complainant should then be allowed to re-examine the witness if necessary, in the same manner as is practised in the superior courts. When the prosecutor or complainant has produced all his witnesses, and their evidence has been heard, together with any other evidence which he may bring forward in support of the information or complaint, the case for the prosecution is closed, and the defendant (or his attorney, if he has one) should be called upon to address the court in his defence, and produce his witnesses.

Should the defendant call any witnesses in support of his defence, they should be sworn, and their evidence heard, together with any other evidence the defendant may bring forward, in the same manner as the witnesses for the prosecutor or complainant, who should be allowed, at the close of each witness's evidence, to cross-examine them.

* By strictly following the directions given in this section, the Justice will not only save time to himself and all parties interested, but will be more likely to keep an orderly Court-room than if he permits the parties to talk as often as they see fit. If the parties are not represented by professional men, the Justice should, at the opening of the case, state that each party will have an opportunity at his discretion either before or after he calls his witnesses, of addressing the bench.

† The decision of the Bench should be pronounced *openly*, in the presence of the parties, as well as of such of the public as may attend the hearing; and





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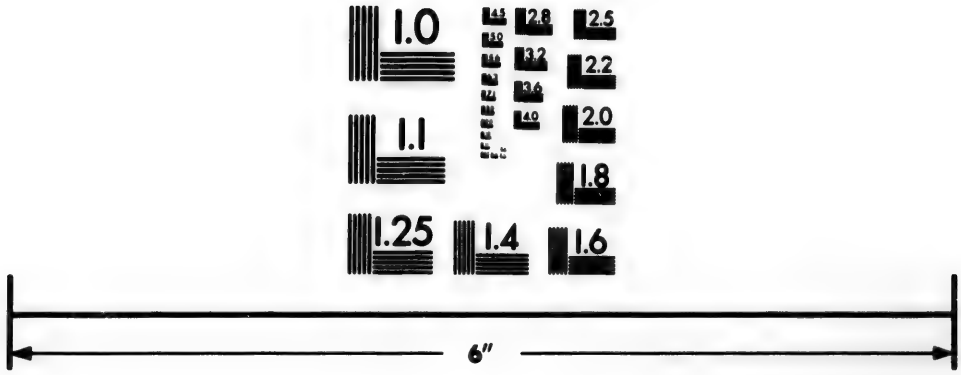

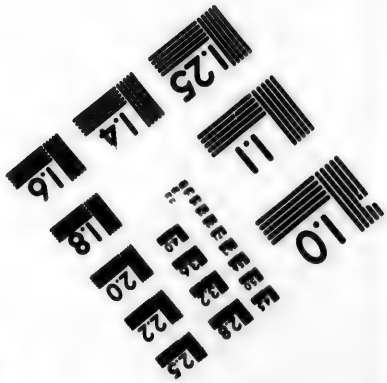

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If defendant is convicted, a minute to be made gratis, and conviction drawn up afterwards.

42. If he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid; and the conviction (I 1, 3) or order (K 1, 3) shall afterwards be drawn up by the said Justice or Justices in proper form, under his or their hand and seal or hands and seals; and he or they shall cause the same to be lodged with the Clerk of the Peace, to be by him filed among the records of the General or Quarter Sessions of the Peace.*

Or if he dismiss the complaint, &c.

43. If the said Justice or Justices dismiss the information or complaint, such Justice or Justices may, when required so to do, make an order of dismissal of the same (L) and shall give the defendant on that behalf a certificate thereof (M); which certificate, upon being afterwards produced, shall, without further proof, be a bar to any subsequent information or complaint, for the same matters respectively, against the same party.

If information or complaint negative any exemption.

44. If the information or complaint in any such case negatives any exemption, exceptions, proviso or condition in the statute on which the same is framed, it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

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in case of conviction being made, the fine to be imposed, together with the amount of costs, ought to be distinctly stated to the defendant, and also, where such is the prescribed course, the term of imprisonment awarded in case of default of payment; or that a distress warrant will be issued against the defendant's goods.

* Generally a person, whether complainant or defendant, who thinks himself aggrieved by an order, decision or conviction of any Justice, may appeal to the Court of Quarter Sessions. It is not necessarily the duty of a Justice to give any information with regard to the right to appeal or the mode of appealing, but where a party is evidently dissatisfied with the decision, and is poor and ignorant, it might be proper as an act of charity to explain the necessary particulars, to enable him to avail himself of the privilege of appeal, otherwise he might unwittingly allow the proper opportunity to escape.

Prosecutors and complainants in certain cases to be deemed competent witnesses and examined upon oath, &c.

45. Every prosecutor of any such information, not having any pecuniary interest in the result, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint, and every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, and the Justice or Justices before whom any such witness appears for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath or affirmation.

Justice may adjourn hearing of any case and commit defendant, or suffer him to go at large, &c.

46. Before or during the hearing of any such information or complaint, any one Justice, or the Justices present, may in their discretion adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective attorneys or agents then present; and in the meantime the said Justice or Justices may suffer the defendant to go at large, or may commit (D) him to the common gaol, or house of correction, or other prison, lock-up or other place of security, within the territorial division for which such Justice or Justices are then acting, or to such other safe custody as the said Justice or Justices think fit; or may discharge such defendant, upon his recognizance (E) with or without sureties, at the discretion of such Justice or Justices, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned.*

* Should the defendant not appear at the hearing, pursuant to the summons, and any doubt exists in the minds of the Justices, after examining on oath the constable who served the summons, that it was duly served a reasonable time before the day appointed for the hearing, or if the non-attendance of the defendant arises from or is occasioned by unavoidable accident, the Justice should, instead of hearing the case *ex parte*, adjourn the hearing of the complaint or information for a reasonable period. Notice of such adjournment should be given to the defendant, or a fresh summons served upon him. In case, however, the

If defendant or prosecutor appear, the case may be heard.

47. If, at the time and place to which such hearing or further hearing has been adjourned, either or both of the parties do not appear, personally or by his or their counsel or attorneys respectively, before the said Justice or Justices, or such other Justice or Justices as may then be there, the Justice or Justices as may then be there present may proceed to such hearing or further hearing, as if such party or parties were present.

If the prosecutor does not appear, case may be dismissed.

48. If the prosecutor or complainant do not appear, the said Justice or Justices may dismiss the said information or complaint, with or without costs, as to such Justices seems fit.

If defendant fails to reappear, &c.

49. In all cases when a defendant is discharged upon his recognizance, as aforesaid, and does not afterwards appear at the time and place mentioned in such recognizance, the Justice or Justices who took the said recognizance, or any other Justice or Justices who may then be there present, having certified (F) on the back of the recognizance the non-appearance of such accused party, may (in Upper Canada) transmit such recognizance to the Clerk of the Peace for the territorial division in which such recognizance was taken, to be proceeded upon in like manner as other recognizances; and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Justice should think fit, upon the defendant's non-appearance, to issue a warrant for his apprehension, the hearing of the complaint or information should be adjourned until the defendant is apprehended. The Justice may also adjourn the hearing of the case whenever there exists such a variance between the summons or warrant issued upon an information or complaint and the evidence adduced on the part of the informant or complainant, as would be calculated to have misled or deceived the defendant as to the charge made against him.

Should the defendant appear before the Justices either in person or by a friend, and request an adjournment upon any fair and reasonable ground, and agree to pay the extra expense occasioned thereby, it seems to be but consonant with justice that the Justices should in such cases exercise a liberal discretion, as they might prejudice a defendant's case by undue haste.

Should the Justice decide on committing the defendant during the adjournment, he will not be liable to an action, although it should eventually turn out that no offence has been committed, provided the commitment has been made *bona fide* and without malice.

Form of convictions and orders to be as in schedule, where no particular form is given in the Statute creating the offence.

50. In all cases of conviction, where no particular form of conviction is given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction has been therein given or not, the Justice or Justices who convict may draw up his or their conviction, on parchment or on paper, in such one of the forms of conviction (I 1, 3) as may be applicable to the case, or to the like effect.*

Where no special form is given, form in (K 1, 3) may be adopted.

51. In case an order be made, and no particular form of order is given by the statute giving authority to make such order, and in all cases of orders made under the authority of any statutes hitherto passed, whether any particular form of order is therein given or not, the Justice or Justices by whom such order is made may draw up the same in such one of the forms of orders (K 1, 3,) as may be applicable to the case, or to the like effect.

Defendant to be served with copy of order, before distress or commitment.

52. In all cases when, by an act of Parliament, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying an order of a Justice or Justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress is issued in that behalf; and such order or minute shall not form any part of such warrant of commitment or of distress.†

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* See "Assaults" in index, and remarks upon convictions therefor.

The formal record of the conviction or order is seldom drawn up at the time the decision is actually made against the defendant, but a minute or memorandum of the terms of the judgment or decision is entered by the Justice or presiding Justice upon the minutes of the proceedings, and the conviction or order itself is drawn up subsequently, in readiness to return to the Clerk of the Peace, to be by him filed among the records of the General or Quarter Sessions of the Peace.

† The penalty or sum of money ordered to be paid under the conviction or order, with the costs, must be paid by the defendant immediately, except orders for the payment of money under the Masters and Servants' Act, and there twenty-one days are allowed for the master to pay such wages: before the expira-

Power to Justices to award costs not inconsistent with the fees established by law to be taken.

53. In all cases of summary conviction, or of orders made by a Justice or Justices of the Peace, the Justice or Justices making the same may in his or their discretion award and order, in and by such conviction or order, that the defendant shall pay to the prosecutor or complainant such costs as to the said Justice or Justices seem reasonable in that behalf and not inconsistent with the fees established by law to be taken on proceedings had by and before Justices of the Peace.

Costs may be awarded to defendant, when the case is dismissed.

54. In cases where such Justice or Justices, instead of convicting or making an order, dismiss the information or complaint, he or they, in his or their discretion, may, in and by his or their order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said Justice or Justices seem reasonable and consistent with law.*

Costs so allowed shall be specified in conviction or order of dismissal

55. The sums so allowed for costs shall in all cases be specified in the conviction or order, or order of dismissal; and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by the conviction or order is to be recovered.

And may be recovered by distress.

56. In cases where there is no such penalty or sum of money to be recovered as aforesaid, such

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tion of such time no warrant can be enforced. Should the Bench be willing, under certain circumstances, to allow a reasonable time for the payment of the fine, or fine and costs, they can do so. Should no time be given by the Justice for the payment of the fine and costs, the defendant should be ordered to be taken into custody, and the warrant of distress, or, under the circumstances hereinafter provided, the warrant of commitment, forthwith made out.

* It has been before remarked that in pronouncing their judgment or decision, Justices should not only state the amount of the penalty, compensation, or sum of money awarded, but also the amount of *costs*, which should be previously ascertained: and this is not only necessary where there is a conviction or order, but also where there is a dismissal of the information or complaint; because in the latter case the costs fall as a matter of course upon the prosecutor or complainant. It is requisite also that the costs should be specified and inserted, not only in the conviction or order where such is made, but also in the order of dismissal, should the information or complaint be dismissed.

costs shall be recoverable by distress and sale of the goods and chattels of the party; and in default of such distress, by imprisonment, with or without hard labour, for any time not exceeding one month, unless the costs be sooner paid.

Powers to Justices to issue warrant of distress in cases where a pecuniary penalty, &c., has been adjudged.

57. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order the penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant, by distress and sale thereof; and also in cases where, by the statute in that behalf, no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, the Justice, or any one of the Justices making such conviction or order, or any Justice of the Peace for the same Territorial Division, may issue his Warrant of Distress (N 1, 2) for the purpose of levying the same, which said Warrant of Distress shall be in writing, under the hand and seal of the Justice making the same.*

Proceeding if sufficient distress be not found.

58. If, after delivery of such Warrant of Distress to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the Justice granting such warrant, then upon proof being made upon oath of the handwriting of the Justice granting such warrant before any Justice of any other territorial division, such Justice shall thereupon make an endorsement (N 3) on such warrant, signed with his hand, authorizing the execution

* If no goods can be found, or not a *sufficient* quantity whereupon to make the levy, the constable should attend before the Justice issuing such warrant to prove the fact, which is technically called "making the return of *Nulla Bona*." This is done by putting the constable upon his oath, and he there makes a short deposition to prove his attempt to make the levy, and that no sufficient goods can be found. (The form of which will be found under article "Return.")

of such warrant within the limits of his jurisdiction; by virtue of which said warrant and endorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

When the issuing a warrant would be ruinous to defendant, or when there are no goods, Justice may commit him to prison.

59. Whenever it appears to any Justice of the Peace to whom application is made for any warrant of distress as aforesaid, that the issuing thereof would be ruinous to the defendant and his family, or whenever it appears to the said Justice, by the confession of the defendant or otherwise, that he hath no goods and chattels whereon to levy such distress, then such Justice, if he deems it fit, instead of issuing a warrant of distress, may (O 1, 2) commit the defendant to the common gaol, house of correction, or lock-up house in the territorial division, there to be imprisoned with or without hard labor, for the time and in the manner the defendant could by law be committed in case such warrant of distress had issued, and no goods or chattels had been found whereon to levy the penalty or sum and costs aforesaid.

When distress issued, defendant may be bailed until it is returned.

60. In all cases where a Justice of the Peace issues any such warrant of distress, he may suffer the defendant to go at large, or, verbally or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody until return has been made to such warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of such Justice, for his appearance before him at the time and place appointed for the return of such warrant of distress,

or before such other Justice or Justices for the same territorial division as may then be there.*

If defendant does not afterwards appear, the recognisance to be certified by a Clerk of the Peace.

61. In all cases where a defendant gives security by recognizance as aforesaid, and does not afterwards appear at the time and place in the said recognizance mentioned, the Justice who hath the same, or any Justice or Justices who may then be there present, upon certifying (F) on the back of the recognizance the non-appearance of the defendant, may, in Upper Canada, transmit such recognizance to the Clerk of the Peace for the territorial division within which the offence is said to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.†

In default of sufficient distress, Justice may commit defendant to prison.

62. If at the time and place appointed for the return of any such warrant of distress, the constable, who has had execution of the same, returns (N 4) that he could find no goods or chattels, or no sufficient goods or chattels, whereon he could levy the sum or sums therein mentioned, together with the costs of, or occasioned by the levy of the same, the Justice of the Peace before whom the same is returned may issue his warrant of commitment (N 5) under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the common gaol, house

* Care should be taken, in acting under the provision of this section, that the warrant of distress be made returnable on a certain day; for if no day be fixed, and the defendant is ordered into custody until such time as the return is made, the imprisonment would be for an indefinite period, and would subject the Justice to an action.

† The marginal note of this section is not correct. After the words "certified by a" insert the words "Justice, and transmitted to the," which appear to have been omitted.

of correction, or lock-up house of the territorial division for which such Justice is then acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such gaol, house of correction or lock-up house and there to imprison him, or to imprison him and keep him to hard labor, in such manner and for such time as is directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress is founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such Justice thinks fit so to order (the amount thereof being ascertained and stated in such commitment) be sooner paid.*

Imprisonment for a subsequent offence to commence at expiration of that for previous offence.

63. Where a Justice or Justices of the Peace, upon such information or complaint as aforesaid, adjudges the defendant to be imprisoned, and such defendant is then in prison undergoing imprisonment upon conviction for any other offence, the

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* The term of imprisonment will commence running from the time when the prisoner is taken into custody under the warrant, and not from the time of signing the order or warrant.

The commitment must be for a time certain; and a Justice's warrant committing a party in default of his finding sureties to keep the peace, "until he should find such sureties, or be discharged by due course of law," was held bad. (*Bickett* v. *Greatrex*, 8 Q. B. 1021).

With regard to the duration of the imprisonment, the statutes will be found to vary considerably, according to the several offences thereby made punishable; and before making out a warrant of commitment in any particular case it will be expedient to refer to the statute under which the conviction is made.

Warrants of commitment should carefully recite the convictions on which they are grounded, and should not be in any respect repugnant thereto; for it has been decided that even where there had been a good and valid conviction, but on the face of the commitment no offence was disclosed, or an error was made, so as to make the description of the offence vary from that stated in the conviction, a Justice was liable to an action of trespass on account of such omission or variation. (*Weikes* v. *Clatterbuck*, 2 Bing. 483.)

The warrant of commitment, like the conviction, should be precise in setting out the nature of the offence, and that it was committed in such a place, naming the township and county, or otherwise shewing that the offence was committed within the jurisdiction of the convicting Justice. But the warrant will be generally sufficient if it substantially follow the forms given in the schedule to this act, and found under the article "Commitment."

warrant of conviction for such subsequent offence shall be forthwith delivered to the gaoler or other officer to whom the same is directed, and the Justice or Justices who issued the same, if he or they think fit, may award and order therein, that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant was previously adjudged or sentenced.

If information be dismissed; costs may be recovered by distress upon prosecutor.

64. When any information or complaint is dismissed with costs as aforesaid, the sum awarded for costs in the order for dismissal may be levied by distress (Q 1) on the goods and chattels of the prosecutor or complainant, in the manner aforesaid; and in default of distress or payment, such prosecutor or complainant may be committed (Q 2) to the common gaol or other prison or lock-up house, or house of correction, in manner aforesaid, for any term not exceeding one month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison (the amount thereof being ascertained and stated in such commitment), be sooner paid.

And the conviction shall be enforced.

65. In case an appeal against any such conviction or order as aforesaid be decided in favor of the respondents, the Justice or Justices who made the conviction or order, or any other Justice of the Peace for the same territorial division, may issue the warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought.

If costs of appeal be ordered to be paid.

66. If upon any such appeal the Court of General or Quarter Sessions orders either party to pay costs, the order shall direct the costs to be paid to the Clerk of the Peace of the court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid.

If they be not paid within a certain time and be not secured by recognizance.

67. If the same be not paid within the time so limited, and the party ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the Clerk of the Peace or his deputy, on application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of twenty cents, shall grant to the party so applying a certificate (R) that such costs have not been paid, and upon production of such certificate to any Justice or Justices of the Peace for the same territorial division, he or they may enforce the payment of such costs by warrant of distress (S 1) in manner aforesaid, and in default of distress, he or they may commit (S 2) the party against whom such warrant has issued in manner hereinbefore mentioned, for any time not exceeding two months, unless the amount of such costs and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such Justice or Justices think fit so to order (the amount thereof being ascertained and stated in such commitment), be sooner paid.

On payment of penalty, distress not to be levied.

68. In all cases where a warrant of distress has issued as aforesaid against any person, and such person pays or tenders to the constable having the execution of the same, the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of payment or tender, such constable shall cease to execute the same.

Or the party, if imprisoned for non-payment, may be discharged.

69. In all cases in which any person is imprisoned as aforesaid for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge

such person if he be in his custody for no other matter.

In cases of summary proceeding, one Justice may issue summonses, warrants, &c.

70. In all cases of summary proceedings before a Justice or Justices of the Peace out of sessions, upon any information or complaint as aforesaid, one Justice may receive such information or complaint, and grant a summons or warrant thereon and issue his summons or warrant to compel the attendance of any witnesses for either party, and to do all other acts and matters necessary preliminary to the hearing, even in cases where by the statute in that behalf such information and complaint must be heard and determined by two or more Justices.

One Justice may issue a warrant of distress or commitment.

71. After a case has been heard and determined, one Justice may issue all warrants of distress or commitment thereon.

Although not a convicting Justice.

72. It shall not be necessary that the Justice who so acts before or after such hearing, shall be the Justice or one of the Justices by whom the case is or was heard and determined.

Two Justices must join in the decision, &c.

73. In all cases where by statute it is required that any information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices must be present and acting together during the whole of the hearing and determination of the case.

Regulation as to the payment of clerk's fees.

74. In Lower Canada the fees to which any clerk of the Special Sessions, or clerk of the Weekly Sessions or clerk to any Justice or Justices out of sessions, is entitled, shall be ascertained, appointed and regulated in manner following, that is to say: the Justices of the Peace, at their General or Quarter Sessions for the several districts, shall, from time to time, as

they see fit, make tables of the fees which in their opinion should be paid to the clerks of the Special and Weekly Sessions, and to the clerks of the Justices of the Peace within their several jurisdictions, and which said tables, being signed by the chairman of every such court of General or Quarter Sessions, shall be laid before the secretary of this Province, and such secretary, if he sees fit, may alter such table or tables of fees, and subscribe a certificate or declaration that the fees specified in such table or tables, as made by such Justices, or as altered by such secretary, are proper to be demanded and received by the Clerks of the Special Sessions and Weekly Sessions and the clerks of the several Justices of the Peace respectively throughout Lower Canada, and such secretary shall cause copies of such table or set of tables of fees to be transmitted to the several Clerks of the Peace throughout Lower Canada, to be by them distributed to the Justices within their several districts respectively, and to be by the said Justices placed in the hands of their clerks respectively.

Penalty for clerks receiving greater fees than entitled to.

75. If after such copy has been received by any such clerk, he demands or receives any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of eighty dollars, to be recovered by action of debt in any court having jurisdiction for that amount by any person who will sue for the same.

What fees clerks may demand.

76. Until such tables or set of tables are framed and confirmed, and distributed as aforesaid, such clerk or clerks may demand and receive such fees as they are now by any rule or regulation of a court of General or Quarter Sessions, or otherwise, authorized to demand and receive.

Regulations as to whom penalties, &c., are to be paid.

77. In every warrant of distress to be issued as aforesaid in Lower Canada, the constable or other person to whom the same is directed, shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the Clerk of the Peace, Clerk of the Special Sessions, Clerk of the Weekly Sessions, or Clerk of the Justices of the Peace, (*as the case may be,*) for the place wherein the Justice or Justices issued such warrant, and if a person convicted of any penalty, or ordered by a Justice or Justices of the Peace to pay any sum of money, pays the same to any constable or other person, such constable or other person shall forthwith pay the same to such Clerk of the Peace, Clerk of the Special Sessions, Clerk of the Weekly Sessions, or clerk of the Justice of the Peace (*as the case may be*).

May pay penalty to gaoler.

78. If any person committed to prison in Lower Canada, upon any conviction or order as aforesaid for non-payment of any penalty, or of any sum thereby ordered to be paid, desires to pay the same and costs before the expiration of the time for which he has been so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he is so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said Clerk of the Peace, Clerk of the Special Sessions, Clerk of the Weekly Sessions, or Clerk of the Justice of the Peace (*as the case may be*).

Gaoler to pay the same to clerk.

As to whom clerk is to pay the same.

79. All sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf has been framed.

In certain cases clerk to pay the same to treasurer, &c.

80. If such statute contains no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the district, municipality, city, town or borough in which such person has been so condemned to pay the said sum, and for which such treasurer shall give him a receipt.

Said clerks and gaolers to keep an exact account of all such moneys received by them, &c.

81. Every such Clerk of the Special Sessions, Clerk of the Weekly Sessions, or Clerk of the Justice of the Peace, and every such gaoler or keeper of a prison, shall keep a true and exact account of all such moneys by him received, of whom and when received, and to whom and when paid, and shall once in every three months render a fair copy of every such account to the Clerk of the Peace for the district in which such payment has been made, who shall likewise every three months render a similar account to the Justices assembled at the Quarterly Sessions of the Peace for the said district, as also, once every month to the Justices assembled at the Weekly Sessions of the Peace.

Inspector, &c., may act alone.

82. Any one Inspector and Superintendent of Police, Police Magistrate or Stipendiary Magistrate, appointed for any city, borough, town, place or territorial division, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatever is authorised by this act to be done by two or more Justices of the Peace; and the several forms hereinafter contained may be varied so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate.

To have power in preserving order.

83. Any Inspector and Superintendent of Police, Police Magistrate or Stipendiary Magistrate as afore-

said, sitting as aforesaid at any police court or other place appointed in that behalf, shall have such and like powers and authority to preserve order in the said courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any courts of law in this province, or by the Judges thereof respectively, during the sittings thereof.

And for enforcing execution of process.

84. The said Inspectors and Superintendents of Police, Police Magistrates and Stipendiary Magistrates, in all cases where any resistance is offered to the execution of any summons, warrant of execution or other process issued by them, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases.

Clerks of the Peace in L. C. to act as clerks of Justices.

85. In all the cities, towns and other places in Lower Canada where General or Quarter Sessions of the Peace are held, the Clerk or Clerks of the Peace shall act as Clerk or Clerks of the Justices of the Peace and of the Inspectors or Superintendents of Police, in such cities, towns and other places, as well at all Special as at all Weekly Sessions of the Peace held therein.

Meaning of "Territorial Division."

86. The words "Territorial Division" whenever used in this act, shall mean in Lower Canada—district, township, parish, or other place, and in Upper Canada—county, union of counties, township, city, town or other place to which the context may apply.

Meaning of "Prison."

87. The word "Prison," whenever it occurs in this act, shall be held to mean any place where parties charged with offences against the law are usually kept and detained in custody.

Forms of schedule to be valid, &c.

88. The several forms in the schedule to this act contained, or forms to the like effect, shall be deemed good, valid and sufficient in law, and the word "district," as used therein, is intended to apply to Lower Canada; and the words "county" or "united counties," to Upper Canada.

SCHEDULES

REFERRED TO IN THE FOREGOING ACT.

(A) *See s.* 1.

SUMMONS TO THE DEFENDANT UPON AN INFORMATION OR COMPLAINT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To A. B., of ——— (*laborer*).

Whereas information hath this day been laid (*or* complaint hath this day been made) before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, city, town, &c., as the case may be*), of ——— for that you (*here state shortly the matter of the information or complaint*): These are therefore to command you, in Her Majesty's name, to be and appear on ——— at ——— o'clock in the forenoon, at ——— before me or such Justices of the Peace for the said district (or *county, united counties, or as the case may be*), as may then be there, to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under (*my*) hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (*county, or as the case may be*) aforesaid.

J. S. [L. S.]

(B) *See s.* 6.

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the district (or *county, united counties, or as the case may be*) of ———

Whereas, on ——— last past, information was laid (*or* complaint was made) before ——— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that A. B. (*&c., as in the summons*): And whereas (*I*) the said Justice of the Peace, then issued (*my*) summons unto the said A. B., commanding him in Her Majesty's name to be and appear on ——— at ——— o'clock in the forenoon, at ——— before (*me*) or such Justices of the Peace as might then be there, to answer unto the said information (*or* complaint) and to be further dealt with according to law; And whereas the said A. B.

hath neglected to be and appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*), to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, united counties, or as the case may be*) aforesaid.

J. S. [L. S.]

(C) *See s.* 6.

WARRANT IN THE FIRST INSTANCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ——

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ——

Whereas information hath this day been laid before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of —— for that A. B. (*here state shortly the matter of information*); and oath being now made before me substantiating the matter of such information: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*), to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (*county, &c., as the case may be*) aforesaid.

J. S. [L. S.]

(D) *See ss.* 12, 22, 34, 46.

WARRANT OF COMMITTAL FOR SAFE CUSTODY DURING AN ADJOURNMENT OF THE HEARING.

Province of Canada, District (or *county, united counties, or as the case may be*) of ——

To all or any of the constables or peace officers in the district (or *county, united counties, or as the case may be*) of —— and to the keeper of the (*common gaol* or *lock-up house*) at ——:

Whereas, on —— last past, information was laid (*or* complaint made) before —— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, as the case may be*) of —— for that (*&c. as in the summons*); And whereas the hearing of the same is adjourned to the —— day of —— (*instant*), at —— o'clock in the (*fore*)

noon, at ——— and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you, or any one of the said constables or peace officers, in Her Majesty's name, forthwith to convey the said A. B. to the (*common gaol* or *lock-up house*) at ——— and there deliver him into the custody of the keeper thereof, together with this precept: And I hereby require you, the said keeper, to receive the said A. B. into your custody in the said (*common gaol* or *lock-up house*) and there safely keep him until the ——— day of ——— (*instant*), when you are hereby required to convey and have him, the said A. B., at the time and place to which the said hearing is so adjourned as aforesaid, before such Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as may then be there, to answer further to the said information (*or* complaint), and to be further dealt with according to law.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c., as the case may be*) aforesaid.

J. S. [L. S.]

(E) *See ss.* 12, 22, 34, 46.

RECOGNIZANCE FOR THE APPEARANCE OF THE DEFENDANT, WHEN THE CASE IS ADJOURNED OR NOT AT ONCE PROCEEDED WITH.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on ——— A. B. of ——— (*laborer*), and L. M. of ——— (*grocer*), and O. P. of ——— (*yeoman*), personally came and appeared before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say: the said A. B. the sum of ——— and the said L. M. and O. P. the sum of ——— each, of good and lawful current money of this Province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition endorsed (*or* hereunder written).

Taken and acknowledged, the day and year first above mentioned, at ——— before me.

J. S. [L. S.]

The condition of the within (*or* the above) written recognizance is such, that if the said A. B. shall personally appear on the ——— day of ——— (*instant*), at ——— o'clock in the (*fore*) noon, at ——— before me or such Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as may then be there, to answer further to the information (*or* complaint) of C. D. exhibited against the said A. B. and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of ——— and you L. M. and O. P., in the sum of ——— each, that you, A. B., appear personally on ——— at ——— o'clock in the (*fore*) noon at ——— before me or such Justices of the Peace for the disirict (or *county, united counties, or as the case may be*) of ——— as shall then be there, to answer further to a certain information (*or* complaint) of C. D., the further hearing of which was adjourned to the said time and place; and unless you appear accordingly, the recognizance entered into by you, A. B., and by L. M. and O. P. as your sureties, will forthwith be levied on you and them.

Dated this —— day of —— one thousand eight hundred and ——

J. S. [L. S.]

(F) *See ss.* 13, 23, 35, 49, 61.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify, that the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within recognizance is forfeited.

J. S. [L. S.]

(G, 1) *See s.* 16.

SUMMONS TO A WITNESS.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To E. F. of ——— in the said district (or *county, united counties, or as the case may be*) of ———.

Whereas information was laid (*or* complaint was made) before ——— (*one*) of Her Majesty's Justices of the Peace, in and for the said district (or *county, united counties, or as the case may be*), of ——— for that (*&c., as in the summons*), and it hath been made to appear to me upon (*oath*) that you are likely to give material evidence on behalf of the prosecutor (*or* complainant, *or* defendant) in this behalf; These are therefore to require you to be and appear on ——— at ——— o'clock in the (*fore*) noon, at ——— before me or such Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as may then be there, to testify what you shall know concerning the matter of the said information (*or* complaint).

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

(G 2) *See s.* 17.

WARRANT WHERE A WITNESS HAS NOT OBEYED A SUMMONS.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables, and other peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas information was laid (*or* complaint was made) before ——— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*&c., as in the summons*), and it having been made to appear to (*me*) upon oath, that E. F., of ——— in the said district (or *county, united counties, or as the case may be*), (*laborer*), was likely to give material evidence on behalf of the (*prosecutor*), (*I*) did duly issue (*my*) summons to the said E. F., requiring him to be and appear on ——— at ——— o'clock in the (*fore*) noon of the same day, at ——— before me or such Justice or Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as might then be there, to testify what he should know concerning the said A. B. or the matter of the said information (*or* complaint); And whereas proof hath this day been made before me, upon oath, of such summons having been duly served upon the said E. F.; And whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons and no just excuse hath been offered for such neglect: These are therefore to command you to take the said E. F. and to bring and have him on ——— at ——— o'clock in the (*fore*) noon, at ——— before me or such Justice or Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as may then be there, to testify what he shall know concerning the said information (*or* complaint).

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

(G, 3) *See s.* 18.

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables, or other peace officers, in the said district (or *county, united counties, or as the case may be*) of ———

Whereas information was laid (*or* complaint was made) before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*&c., as in the summons*), and it being made to appear before me upon oath that E. F. of ——— (*laborer*), is likely to give material evidence on behalf of the (*prosecutor*) in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F. before me, on ——— at ——— o'clock in the (*fore*) noon, at ——— or before me or such other Justice or Justices of the Peace for the said district (or *county, united*

counties, or as the case may be) as may then be there, to testify what he shall know concerning the matter of the said information (*or* complaint).

Given under my hand and seal, this —— day of —— in the year of our Lord ——, at —— in the district (or *county, as the case may be*) aforesaid.

J. S. [L. S.]

(G, 4) *See s.* 19.

COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR GIVE EVIDENCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ——

To all or any of the constables or other peace officers in the said district (or *county united counties, or as the case may be*) of —— and to the keeper of the common gaol of the said district, (or *county, united counties, or as the case may be*) at ——.

Whereas information was laid (*or* complaint was made) before (*me*) —— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of —— for that (*&c. as in the summons*), and one E. F., now appearing before me such Justice as aforesaid, on —— at —— and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do, (*or* being now here duly sworn as a witness in the matter of the said information [*or* complaint] doth refuse to answer a certain question concerning the premises which is now put to him, and more particularly the following question [*here insert the exact words of the question*]), without offering any just excuse for such his refusal: These are therefore to command you, or any one of the said constables or peace officers, to take the said E. F., and him safely to convey to the common gaol at —— aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody in the said common gaol, and there imprison him for such his contempt for the space of —— days, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, united counties, or as the case may be*) aforesaid.

J. S. [L. S.]

(H) *See s.* 33.

WARRANT TO REMAND A DEFENDANT WHEN APPREHENDED.

Province of Canada, District (or *county, united counties, or as the case may be*) of ——

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of —— and to the keeper of the (*common gaol* or *lock-up house*) at ——

Whereas complaint was made (*or* information was laid) before —— (*one*) of Her Majesty's Justices of the Peace in and for the district (or

county, united counties, or as the case may be) of ——— for that (*&c., as in the summons or warrant*); And whereas the said A. B. hath been apprehended under and by virtue of a warrant, upon such information (*or* complaint), and is now brought before me, as such Justice as aforesaid: These are therefore to command you, or any one of the said constables or peace officers, in Her Majesty's name, forthwith to convey the said A. B. to the (*common gaol* or *lock-up house*) at ——— and there to deliver him to the said keeper thereof, together with this precept: And I do hereby command you the said keeper to receive the said A. B. into your custody in the said (*common gaol* or *lock-up house*), and there safely keep him until ——— next, the ——— day of ——— (*instant*), when you are hereby commanded to convey and have him at ——— at ——— o'clock in the (*fore*) noon of the same day, before me or such Justice or Justices of the Peace of the said district (or *county, united counties, or as the case may be*) as may then be there, to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (*county, or as the case may be*) aforesaid.

J. S. [L. S.]

(I, 1) *See ss.* 42, 50.

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF SUFFICIENT DISTRESS BY IMPRISONMENT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on the ——— day of ——— in the year of our Lord, ——— at ——— in the said district (or *county, united counties, or as the case may be*), A. B. is convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*), for that the said A. B., (*&c., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B., for his said offence, to forfeit and pay the sum of ——— (*stating the penalty, and also the compensation, if any*), to be paid and applied according to law, and also to pay to the said C. D. the sum of ——— for his costs in this behalf; and if the said several sums be not paid forthwith (*or* on or before the ——— of ——— next), * I order that the same be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress, * I adjudge the said A. B. to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*), at ——— in the said district (or *county*) of ——— (*there to be kept to hard labor*) for the space of ——— unless the said several sums and all costs and charges of the said distress (*and of the commitment and conveying of the said A. B. to the said gaol*) shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at —— in the district (or *county, united counties, or as the case may be*) aforesaid.

J. S. [L. S.]

* *Or when the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks* * * *say*, "then,

inasmuch as it hath now been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. or his family," (*or*, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress"), I adjudge, &c., (*as above, to the end.*)

(I, 2)

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on the ——— day of ——— in the year of our Lord ——— at ——— in the said district (or *county, united counties, or as the case may be,*) A. B. is convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*), for that he the said A. B. (*&c., stating the offence, and the time and place when and where it was committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of ——— (*stating the penalty and the compensation, if any*), to be paid and applied according to law; and also to pay to the said C. D. the sum of ——— for his costs in this behalf; and if the said several sums be not paid forthwith (*or*, on or before ——— next,) I adjudge the said A. B. to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be,*) at ——— in the said district *or* county of ——— (*and there to be kept at hard labor*) for the space of ——— unless the said sums and the costs and charges of conveying the said A. B. to the said common gaol, shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at —— in the district (or *county, united counties, or as the case may be,*) aforesaid.

J. S. [L. S.]

(I, 3) *See ss.* 42, 50.

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, &c.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on the ——— day of ——— in the year of our Lord ——— in the said district (or *county, united counties, or as the case may be,*) A. B. is convicted before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*), for that he the said A. B. (*&c., stating the offence and the time and place when and where it was committed*); and I adjudge the said A. B. for his said offence to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*), at ——— in the county of ——— (*and there to be kept at hard labor*) for the space of ———; and I also adjudge the said A. B. to pay to the said C. D. the sum of ——— for his costs in this behalf, and if the said sum for

costs be not paid forthwith, (*or* on or before ——— next), then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, * I adjudge the said A. B. to be imprisoned in the said common gaol, (*and kept there at hard labor*) for the space of ——— to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at —— in the district (or *county, united counties, or as the case may be*) aforesaid.

J. S. [L. S.]

* *Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks* * *, say,* "inasmuch as it hath now been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or*, "that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress") I adjudge, &c.

(K, 1) *See ss.* 42, 51.

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on ——— complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now at this day, to wit, on ——— at ——— the parties aforesaid appear before me, the said Justice, (*or*, the said C. D. appears before me, the said Justice), but the said A. B. although duly called doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here on this day before me or such Justice or Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the said sum of ——— forthwith, (*or* on or before ——— next), (*or as the statute may require,*) and also to pay to the said C. D. the sum of ——— for his costs in this behalf; and if the said several sums be not paid forthwith (*or* on or before ——— next), then * I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, * I adjudge the said A. B. to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*) at ——— in the said district (or *county*) of ——— (*and there kept to hard labor*) for the space of ——— unless the said

several sums and all costs and charges of the said distress (*and of the commitment and conveying of the said A. B. to the said common gaol*) shall be sooner paid.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be,*) aforesaid.

J. S. [L. S.]

* *Or, when the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks* * * *say*, "inasmuch as it hath now been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or*, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress"), I adjudge, &c.

(K, 2)

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ——

Be it remembered, That on —— complaint was made before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of —— for that (*&c., stating the facts entitling the complainant to the order, with the time and place when and where they occurred*), and now at this day, to wit, on —— at —— the parties aforesaid appear before me the said Justice, (*or* the said C. D. appears before me the said Justice), but the said A. B. although duly called doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf, requiring him to be and appear here on this day before me or such Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as should now be here, to answer the said complaint, and be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of —— forthwith, (*or* on or before —— next), (*or as the statute may require,*) and also to pay to the said C. D. the sum of —— for his costs in this behalf; and if the said several sums be not paid forthwith, (*or* on *or* before —— next,) then I adjudge the said A. B. to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*) at —— in the said district (*or* county) of —— (*there to be kept at hard labor*) for the space of —— unless the said several sums (*and costs and charges of commitment and conveying the said A. B. to the said common gaol*) shall be sooner paid.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, &c.*) aforesaid.

J. S. [L. S.]

(K, 3) *See ss.* 42, 51.

ORDER FOR ANY OTHER MATTER, WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on ——— complaint was made before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred*); and now at this day, to wit on ——— at ——— the parties aforesaid appear before me the said Justice (*or* the said C. D. appears before me the said Justice), but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here this day before me, or such Justice or Justices of the Peace for the said district (or *county, united counties, or as the case may be*) as should now be here, to answer to the said complaint, and be further dealt with according to law; and now having heard the matter of the said complaint, I do therefore adjudge the said A. B. to (*here state the matter required to be done*), and if upon a copy of a minute of this order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*), at ——— in the said county of ——— (*there to be kept at hard labor*) for the space of ——— unless the said order be sooner obeyed (*if the statute authorize this*); and I do also adjudge the said A. B. to pay to the said C. D. the sum of ——— for his costs in this behalf, and if the said sum for costs be not paid forthwith, (*or* on or before ——— next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said common gaol (*there to be kept at hard labor*) for the space of ——— to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, united counties, or as the case may be*) aforesaid.

J. S. [L. S.]

(L) *See s.* 43.

ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, That on ——— information was laid (*or* complaint was made) before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*&c. as in the summons to the defendant,*) and now

at this day, to wit on ——— at ——— both the said parties appear before me, in order that I should hear and determine the said information (*or* complaint), (*or* the said A. B. appeared before me, but the said C. D. although duly called doth not appear), whereupon the matter of the said information (*or* complaint) being by me duly considered, (it manifestly appears to me that the said information [*or* complaint] is not proved,)* and I do therefore dismiss the same, (and do adjudge that the said C. D. do pay to the said A. B. the sum of ——— for his costs incurred by him in his defence in this behalf; and if the said sum for costs be not paid forthwith, (*or* on or before ———), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*), at ——— in the said county of ——— (*and there to be kept at hard labor*) for the space of ——— unless the said sum for the costs and all costs charges of the said distress (*and of the commitment of the said C. D. to the said common gaol*) shall be sooner paid.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, united counties, or as the case may be*) aforesaid.

J. S. [L. S.]

* *If the informant or complainant do not appear, these words may be omitted.*

(M) *See s.* 43.

CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or* complaint) preferred by C. D. against A. B. for that (*or as in the summons*), was this day considered by me, one of Her Majesty's Justices of the Peace in and for the district (or *county, united counties, or as the case may be*) of ——— and was by me dismissed (*with costs*).

Dated this —— day of —— one thousand eight hundred and ——

J. S. [L. S.]

(N, 1) *See. s.* 57.

WARRANT OF DISTRESS UPON CONVICTION FOR A PENALTY.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas A. B., late of ——— (*laborer*) was on this day (*or* on ——— last past) duly convicted before ——— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B. should for such his offence forfeit and pay (*&c., as in the conviction*), and should also pay to the said C. D. the sum of ——— for his costs in that behalf; and it was thereby

ordered that if the said several sums should not be paid (*forthwith*) the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*), at ——— in the said county of ——— (*and there to be kept at hard labor*) for the space of ——— unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, should be sooner paid; And whereas the said A. B., being so convicted as aforesaid, and being (*now*) required to pay the said sums of ——— and ——— hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within ——— days next after the making of such distress, the said sums together with the reasonable charges of taking and keeping the distress, shall not be paid, then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me (*the convicting Justice* or *one of the convicting Justices*), that I may pay and apply the same as by law is directed, and may render the overplus, if any, on demand to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such further proceedings may be had thereon as to law doth appertain.

Given under my hand and seal, this ——— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

(N, 2) *See s.* 57.

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas, on ——— last past, a complaint was made before ——— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*), for that (*&c., as in the order*), and afterwards, to wit, on ——— at ——— the said parties appeared before ——— (*as in the order*), and thereupon having considered the matter of the said complaint, the said A. B. was adjudged (*to pay to the said C. D. the sum of ——— on or before —— —— then next*), and also to pay to the said C. D. the sum of —— for his costs in that behalf; and it was ordered that if the said several sums should not be paid on or before the said ——— then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*) at ——— in the said county of ——— (*and there kept at hard labor*) for the space of ——— unless the said several sums and all costs and charges of the distress (*and of the commitment and conveying of the said A. B. to the said common gaol*) should be the sooner paid; And * whereas the time in

and by the said order appointed for the payment of the said several sums of ——— and ——— hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of ——— days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me (*or some other of the convicting Justices, as the case may be*), that I (*or* he) may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to law doth appertain.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

(N, 3) *See s.* 58.

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Whereas proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*), that the name of J. S. to the within warrant subscribed is of the hand-writing of the Justice of the Peace within mentioned, I do therefore authorize U. T. who bringeth me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all constables and other peace officers in the said district (or *county, united counties, or as the case may be*) of ——— to execute the same within the said district (or *county, united counties, or as the case may be*), and of ———

Given under my hand, this —— day of —— one thousaud eight hundred and ——

O. K.

(N, 4) *See s.* 62.

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable of ——— in the district (or *county, united counties, or as the case may be*) of ——— hereby certify to J. S. Esquire, one of Her Majesty's Justices of the Peace for the district (or *county, united counties, or as the case may be*) that by virtue of this warrant, I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this —— day of —— one thousand eight hundred and ——

W. T.

(N, 5) *See s.* 62.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

To all or any of the constables and other peace officers in the district (or *county, united counties, or as the case may be*) of ——— and to the keeper of the common gaol of the said district (or *county united counties, or as the case may be*) of ——— at ——— in the said district (*or* county) of ———

Whereas (*&c., as in either of the foregoing distress warrants* N 1, 2, *to the asterisks*, and then thus*): And whereas afterwards, on the ——— day of ——— in the year aforesaid, I the said Justice issued a warrant to all or any of the constables or other peace officers of the district (or *county, united counties, or as the case may be*) of ———commanding them, or any of them, to levy the said sums of ——— and ——— by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said warrant of distress by the constable who had the execution of the same as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely convey to the common gaol at ——— aforesaid, and there deliver him to the said keeper, together with this precept: and I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody, in the said common gaol, there to imprison him (*and keep him at hard labor*) for the space of ——— unless the said several sums, and al the costs and charges of the said distress, (*and of the commitment and conveying of the said A. B. to the said common gaol*) amounting to the further sum of ——— shall be sooner paid unto you the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, as the case may be*) aforesaid.

J. S. [L. S.]

(O, 1)

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables and other peace officers in the said district (or *county, united counties, or as the case may be*) of ——— and to the keeper of the common gaol of the said district (or *county, united counties or as the case may be*) of ———at ——— in the said district (*or* county of ———:

Whereas A. B., late of ——— (*laborer*), was this day convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case mag be*) for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A.B., for his offence, should forfeit and pay the sum of ——— (*&c., as*

in the conviction), and should pay to the said C. D. the sum of ——— for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid (*forthwith*) the said A. B. should be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*) at ——— in the said district (*or* county) of ——— (*and there kept at hard labor*) for the space of ——— unless the said several sums (*and the costs and charges of conveying the said A. B. to the said common gaol*) should be sooner paid; and whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at ——— aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol to receive the said A. B. into your custody in the said common gaol, there to imprison him (*and keep him at hard labor*) for the space of ——— unless the said several sums (*and costs and charges of carrying him to the said common gaol, amounting to the further sum of* ———) shall be sooner paid; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

(O, 2)

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables and other peace officers in the said district (or *county, united counties or as the case may be*) of ——— and to the keeper of the common gaol of the district (or *county, united counties, or as the case may be*) of ——— at ——— in the said district (*or* county) of ———

Whereas on ——— last past, complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*&c., as in the order*), and afterwards, to wit, on the ——— day of ——— at ——— the parties appeared before me the said Justice (*or as it may be in the order*), and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to pay the said C. D. the sum of ——— on or before the ——— day of ——— then next, and also to pay to the said C. D. the sum of ——— for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the ——— day of ——— then next, the said A. B. should be imprisoned in the common gaol of the District (or *county, united counties, or as the case may be*) of ——— at ——— in the said county of ——— (*and there be kept at hard labor*) for the space of ——— unless the said several sums (*and the costs and charges of conveying the said A. B. to the said common gaol, as the case may be*) should be sooner paid; and whereas the time in and by the said

order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, the said constables and peace officers, or any of you, to take the said A. B. and him safely to convey to the said common gaol at ——— aforesaid, and there to deliver him to the keeper thereof, together with this precept; And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (*and keep him at hard labor*) for the space of ——— unless the said several sums (*and the costs and charges of conveying him to the said common gaol, amounting to the further sum of* ———) shall be sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this ——— day of ——— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

(Q, 1) *See s.* 64.

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ———

Whereas on ——— last past, information was laid (*or* complaint was made) before ——— (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that (*&c., as in the order of dismissal*), and afterwards, to wit on ——— at ——— both parties appearing before ——— in order that (*I*) should hear and determine the same, and the several proofs adduced to (*me*) in that behalf being by (*me*) duly heard and considered, and it manifestly appearing to (*me*) that the said information (*or* complaint) was not proved, (*I*) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of ——— for his costs incurred by him in his defence in that behalf; and (*I*) ordered that if the said sum for costs should not be paid (*forthwith*) the same should be levied on the goods and chattels of the said C. D., and (*I*) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*) of ——— at ——— in the said district *or* county of ——— (*and there kept at hard labor*) for the space of ——— unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, should be sooner paid; * And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, hath not paid the same, or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the space of ——— days next after the making of such distress the said last-mentioned sum together with the reasonable charges of taking and keeping the said distress, shall not be paid, then that you do sell the

said goods and chattels so by you distrained, and do pay the money arising from such sale to me (*the Justice who made such order or dismissal, as the case may be*) that (*I*) may pay and apply the same as by law directed, and may render the overplus (if any), on demand to the said C. D.; And if no such distress can be found, then that you certify the same unto me, (*or to any other Justice of the Peace for the same district*, [or *county, united counties, or as the case may be*]), to the end that such proceedings may be had therein as to law doth appertain.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *counties, or as the case may be*) aforesaid.

J. S. [L. S.]

(Q, 2) *See s.* 64.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Province of Canada, district (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or peace officers in the said district (or *county, united counties, or as the case may be*) of ——— and to the keeper of the common gaol of the said district (or *county, united counties, or as the case may be*) of ——— at ——— in the said district (*or* county) of ———

Whereas (*&c., as in the last form, to the asterisk,* * *and then thus*): And whereas, afterwards, on the ——— day of ——— in the year aforesaid, I, the said Justice, issued a warrant to all or any of the constables or other peace officers of the said district (or *county, united counties, or as the case may be*) commanding them, or any one of them, to levy the said sum of ——— for costs, by distress and sale of the goods and chattels of the said C. D.; and whereas it appears to me, as well by the return to the said warrant of distress of the constable (*or* peace officer) charged with the execution of the same, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found; These are therefore to command you, the said constables and peace officers, or any one of you, to take the said C. D., and him safely convey to the common gaol of the said district (or *county, united counties, or as the case may be*) at ——— aforesaid, and there deliver him to the keeper thereof, together with this precept; And I hereby command you, the said keeper of the said common gaol, to receive the said C. D. into your custody in the said common gaol, there to imprison him (*and keep him at hard labor*) for the space of ——— unless the said sum, and all the costs and charges of the said distress (*and of the commitment and conveying of the said C. D to the said common gaol, amounting to the further sum of* ———) shall be sooner paid up unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

(R) *See s.* 67.

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the Clerk of the Peace, District (or *county, united counties, or as the case may be*) of ———

TITLE OF THE APPEAL.

I hereby certify that at a Court of General Quarter Sessions of the Peace holden at ——— in and for the said district (or *county, united counties, or as the case may be*) on ——— last past, an appeal by A. B., against a conviction (*or* order) of J. S., Esquire, one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) came on to be tried, and was there heard and determined, and the said Court of General Quarter Sessions thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (*appellant*) should pay to the said (*respondent*) the sum of ——— for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the Clerk of the Peace of the said district (or *county, united counties, or as the case may be*) on or before the ——— day of ——— instant, to be by him handed over to the said (*respondent*); and I further certify that the said sum for costs has not, nor has any part thereof, been paid, in obedience to the said order.

Dated the —— day of —— one thousand eight hundred and ——

G. H.,
Clerk of the Peace.

(S, 1) *See s.* 67.

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables, or other peace officers, in the said district (or *county, united counties, or as the case may be*) of ———

Whereas (*&c., as in the warrants of distress* N 1, 2, *ante, and to the end of the statement of the conviction or order, and then thus*): And whereas the said A. B. appealed to the court of General Quarter Sessions of the Peace for the said district (or *county, united counties, or as the case may be*) against the said conviction or order, in which appeal the said A. B. was the appellant, and the said C. D. (*or* J. S., Esquire, the Justice of the Peace who made the said conviction or order, was the respondent), and which said appeal came on to be tried and was heard and determined at the last General Quarter Sessions Peace in and for the said district (or *county, united counties, or as the case may be*), holden at ——— on ——— and the said Court of General Quarter Sessions thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (*appellant*) should pay to the said (*respondent*) the sum of ——— for his costs incurred by him in his said appeal, which said sum was to be paid to the Clerk of the Peace of the said district (or *county, united counties, or as the case*

may be) on or before the ——— day of ——— one thousand eight hundred and ——— to be by him handed over to the said C. D.; And whereas the Clerk of the Peace of the said district (or *county, united counties, or as the case may be*) hath on the ——— day of ——— instant, duly certified that the said sum for costs had not been paid; * These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of ——— days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the Clerk of the Peace for the said district, (or *county, united counties, or as the case may be*) of ——— that he may pay and apply the same as by law directed; and if no such distress can be found, then that you certify the same unto me or any other Justice of the Peace for the same district (or *county, united counties, or as the case may be*), to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

O. K. [L. S.]

(S, 2) *See s.* 52.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ——— and to the keeper of the common gaol of the said district (or *county, united counties, or as the case may be*) of ——— at ——— in the said county of ———

Whereas, (*&c., as in the last form to the asterisk *, and then thus*): And whereas, afterwards on the ——— day of ——— in the year aforesaid, I, the undersigned issued a warrant to all or any of the constables or other peace officers in the said district (or *county, united counties, or as the case may be*) of ——— commanding them, or any of them, to levy the said sum of ——— for costs, by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said warrant of distress of the constable (*or* peace officer) who was charged with the execution of the same, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are therefore to command you, the said constables or peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol of the said district (or *county, united counties* of ——— *as the case may be*), at ——— aforesaid, and there deliver him to the said keeper thereof, together with this precept: and I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (*and keep him at hard labor*) for the space of ——— unless the said sum and all costs and

charges of the said distress (*and of the commitment and conveying of the said A. B. to the said common gaol, amounting to the further sum of* ———) shall be sooner paid unto you, the said keeper; and for so doing, this shall be your sufficient warrant.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district aforesaid.

J. N. [L. S.]

(T) *See s.* 20.

GENERAL FORM OF INFORMATION ON OATH.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

The information (*or* complaint) of C. D., of the township of ——— in the said district (or *county, united counties, or as the case may be*) of ——— (*laborer*), (*if preferred by an attorney or agent, say*): "by D. E., his duly authorized agent (*or attorney*), in this behalf, taken upon oath, before me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— at N., in the said district (or *county, or as the case may be*) of ——— this ——— day of ——— in the year of our Lord one thousand eight hundred and ——— who saith * that (he hath just cause to suspect and believe, and doth suspect and believe that) A. B., of the (*township*) of ——— in the said district (or *county, or as the case may be*) of ——— within the space of ——— (*the time within which the information or complaint must be laid*), last past, to wit on the ——— day of ——— instant, at the township of ——— in the district (*county, or as the case may be*) aforesaid, did (*here set out the offence, &c.*), contrary to the form of the statute in such case made and provided.

C. D. *or* (D. E.)

Taken and sworn, before me, the day and year and at the place above mentioned

J. S.

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

Be it remembered, that on ——— information was laid (*or* complaint was made) before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— for that ——— (*&c., as in the summons to the defendant*), and now at this day, to wit, on ——— at ——— (*if at an adjournment insert here*): "to which day the hearing of this case hath been duly adjourned, of which the said C. D. had due notice"), both the said parties appear before me, in

order that I should hear and determine the said information (*or* complaint), (*or* the said A. B. appeareth before me, but the said C. D., although duly called, doth not appear); whereupon the matter of the said information (*or* complaint) being by me duly considered, (it manifestly appears to me that the said information (*or* complaint) is not proved, and) (*if the informant or complainant do not appear, these words may be omitted*), I do therefore dismiss the same, (and do adjudge that the said C. D. do pay to the said A. B. the sum of ——— for his costs incurred by him in his defence in this behalf; and if the said sum for costs be not paid forthwith (*or* on or before ———), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said district (or *county, united counties, or as the case may be*) of ——— at ——— (*and there kept at hard labor*) for the space of ——— unless the said sum for costs, and all costs and charges of the said distress (*and of the commitment and conveying of the said C. D to the said common gaol*) shall be sooner paid).

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (or *county, or as the case may be*) aforesaid.

J. S. [L. S.]

FORM OF CERTIFICATE OF DISMISSAL.

I hereby certify, that an information (*or* complaint) preferred by C. D. against A. B. for that (*&c., as in the summons*), was this day considered by me, one of Her Majesty's Justices of the Peace in and for the district (or *county, united counties, or as the case may be*) of ——— and was by me dismissed (with costs).

Dated this —— day of —— one thousand eight hundred and ——

J. S.

GENERAL FORM OF NOTICE OF APPEAL AGAINST A CONVICTION.

To C. D., of &c., and ——— (*the names and additions of the parties to whom the notice of appeal is required to be given*).

Take notice, that I, the undersigned A. B., of &c., do intend to enter and prosecute an appeal at the next General Quarter Sessions of the Peace, to be holden at ——— in and for the district (or *county, united counties, or as the case may be*) of ——— against a certain conviction (*or* order), bearing date on or about the ——— day of —— instant, and made by (*you*) C. D. Esquire, (*one*) of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*) of ——— whereby the said A. B. was convicted of having (*or* was ordered to pay) (*here state the offence as in the conviction, information or summons, or the amount adjudged to be paid, as in the order, as correctly as possible*): and further, take notice that the grounds of my appeal are, first, that I am not guilty of the said offences; secondly, that the formal conviction drawn up and returned to the session

is not in law sufficient to support the said conviction of me the said A. B., *(together with any other grounds, care being taken that all are stated, as the appellant will be precluded from going into any other than those stated).*

Dated this —— day of —— one thousand eight hundred and ——

A. B.

NOTE.—*If this notice be given by several Defendants, or by an Attorney, it can easily be adapted.*

FORM OF RECOGNIZANCE TO TRY THE APPEAL, &c.

Be it remembered, that on —— A. B., of —— (*laborer*) and L. M., of —— (*grocer*) and N. O., of —— (*yeoman*) personally came before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of —— and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say, the said A. B. the sum of —— and the said L. M. and N. O. the sum of —— each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition endorsed.

Taken and acknowledged, the day and year first above mentioned, at —— before me.

J. S.

The condition of the within written recognizance is such, that if the said A. B. shall, at the (*next*) General Quarter Sessions of the Peace to be holden at —— on the —— day of —— next, in and for the said district (or *county, united counties, or as the case may be*) of —— enter and prosecute an appeal against a certain conviction bearing date —— day of —— instant, and made by me the said Justice, whereby he the said A. B. was convicted, for that he the said A. B. did on the —— day of —— at the township of —— in the said district (or *county, united counties, or as the case may be*) of —— (*here set out the offence stated to the conviction*); And further, that if the said A. B. shall abide by and duly perform the order of the court to be made upon the trial of such an appeal, then the said recognizance to be void, or else to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT (APPELLANT) AND HIS SURETY.

Take notice, that you A. B., are bound in the sum of —— and you L. N. and N. O. in the sum of —— each, that you the said A. B. at the next General Quarter Sessions of the Peace to be holden at —— in and for the said district (or *county, united counties, or as the case may be*) of —— enter and prosecute an appeal against a conviction dated the —— day of —— (*instant*), whereby you, A. B. were convicted of (*stating offence shortly*), and abide by and perform the order of the court to

be made upon the trial of such appeal; and unless you prosecute such appeal accordingly, the recognizance entered into by you will forthwith be levied on you.

Dated this —— day of —— one thousand eight hundred and ——

SURETIES.

COMPLAINT BY THE PARTY THREATENED FOR SURETIES FOR THE PEACE.

Proceed as in the form (T) *to the asterisk,* then:* That A. B. of the (*township*) of ——— in the district (or *county, or as the case may be*) of ——— did on the ——— day of ——— (instant *or* last past, *as the case may be*), threaten the said C. D. in the words or to the effect following, that is to say (*set them out with the circumstances under which they were used*): and that from the above and other threats used by the said A. B. towards the said C. D., he the said C. D. is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him the said C. D., and the said C. D. also saith that he doth not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

FORM OF RECOGNIZANCE FOR THE SESSIONS.

Be it remembered, that on the ——— day of ——— in the year of our Lord ——— A. B. of ——— (*laborer*), L. M. of ——— (*grocer*), and N. O. of ——— (*butcher*), personally came before (*us*), the undersigned, (*two*) of Her Majesty's Justices of the Peace for the said district (or *county, united counties, or as the case may be*) of ——— and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say: the said A. B. the sum of ——— and the said L. M. and N. O. the sum of ——— each, of good and lawful money of Canada, to be made and levied of their goods and chattels lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. fail in the condition endorsed.

Taken and acknowledged, the day and year first above mentioned, at —— before us.

J. S.
J. T.

The condition of the within written recognizance is such, that if the within bounden A. B. (of &c.) shall appear at the next Court of General Quarter Sessions of the Peace to be holden in and for the said district (or *county, united counties, or as the case may be*) of ——— to do and receive what shall be then and there enjoined him by the court, and in the meantime shall keep the peace and be of good behaviour towards Her Majesty and all her liege people, and especially towards C. D. (of &c.) for the term of ——— now next ensuing, then the said recognizance to be void, or else to stand in full force and virtue.

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Province of Canada, District (or *county, united counties, or as the case may be*) of ———

To the constable of the ——— in the said district (or *county*, or *one of the united counties, or as the case may be*) of ——— and to the keeper of the common gaol of the said district, (or *county, united counties, or as the case may be*) at ——— in the said district (or *county, or in the county of* ———):

Whereas, on the ——— day of ——— instant, complaint on oath was made before the undersigned (*or* J. L. Esquire), (*one*) of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— by C. D. of the township of ——— in the said district (*or county, or as the case may be*) (*laborer*), that A. B. of, &c., on the ——— day of ——— at the township of ——— aforesaid, did threaten (*&c., follow to end of complaint, as in form above, in the past tense, then*): And whereas the said A. B. was this day brought and appeared before the said Justice (*or* J. S. Esquire), one of Her Majesty's Justices of the Peace in and for the said district (or *county, united counties, or as the case may be*) of ——— to answer unto the said complaint: And * having been required by me to enter into his own recognizance in the sum of ——— with two sufficient sureties in the sum of ——— each, as well for his appearance at the next General Quarter Sessions of the Peace to be held in and for the said district (or *county, united counties, or as the case may be*) of ——— to do what shall be then and there enjoined him by the court, as also in the meantime to keep the peace and be of good behaviour towards Her Majesty and all her liege people, and especially towards the said C. D., hath refused and neglected, and still refuses and neglects to find such sureties): These are therefore to command you, the said constable of the township of ———, to take the said A. B., and him safely to convey to the (*common gaol*) at —— aforesaid, and there to deliver him to the keeper thereof, together with this precept; And I do hereby command you, the said keeper of the said (*common gaol*), to receive the said A. B. into your custody, in the said (*common gaol*), there to imprison him until the said next General Quarter Sessions of the Peace, unless he in the meantime find sufficient sureties as well for his appearance at the said sessions, as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this —— day of —— in the year of our Lord —— at —— in the district (*county, or as the case may be*) aforesaid.

J. S. [L. S.]

THE CRIMINAL LAW OF UPPER CANADA.

"The Criminal Law of England, as it stood on the seventeenth day of September, in the year of our Lord one thousand seven hundred and ninety-two, and as the same has since been repealed, altered, varied, modified, or affected by any Act of the Imperial Parliament having force of law in Upper Canada, or by any Act of the Parliament of the late Province of Upper Canada, or of the Province of Canada, shall be the Criminal Law of Upper Canada." (Con. Stat. U. C. c. 94, s. 1.)

ABDUCTION.

Abduction is an offence at common law, though the party so taken away may be consenting to a marriage.

Abduction of Heiresses.—Con. Stat. C., c. 91, declares the abduction of an heiress from pecuniary motives to be a felony. It enacts, by s. 25, as follows:

"In case any woman has an interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or be an heiress presumptive or next of kin to any one having such interest, any person who, from motives of lucre, takes away or detains such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and shall respectively be imprisoned in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years."*

* In proceedings upon this section it will be necessary to prove: 1st. That the prisoner took or detained the woman against her will. 2nd. That the woman

ABDUCTION OF FEMALES UNDER SIXTEEN.—"Any person who unlawfully takes or causes to be taken away any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanour, and shall be punished by fine or imprisonment, or by both, as the court shall award."* (Con. Stat. C. c. 91, s. 26.)

DECOYING CHILDREN UNDER TEN.—"Any person who maliciously, either by force or fraud, leads or takes away, or decoys, or entices away or detains, any child under the age of ten years, with intent to deprive the parent or parents, or any other person or persons having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; and any person who, with any such intent, receives or harbours any such child, knowing the same to have been by force or fraud, led, taken, decoyed, enticed away or detained as hereinbefore mentioned; and any person who counsels, aids or abets any such offender, shall respectively be guilty of felony, and shall be imprisoned at hard labour in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (Con. Stat. C. c. 91, s. 27.) To this there is an exception, as follows: "No person who claims to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue of the last section, on account of his getting possession of such child, or taking such

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has an *interest*, or is next of kin to some person who has an interest, in real or personal property. 3rd. That the prisoner did so from motives of lucre. 4th. *Intent* to *marry* or *defile*, or *cause* to be married or defiled. The expressions of the prisoner with regard to her property may be taken as evidence of such motive.

The woman is a competent witness against the prisoner, although the marriage ceremony may have actually been performed; as this is a case in which her liberty and person are affected. (Russell on Crimes, i. 709; Roscoe's Crim. Evid. 245.)

* No improper motive need here be proved. Proof of the taking out of possession and of the want of consent on the part of parent or guardian, is necessary. Illegitimate children are under the protection of this section. It is no excuse that the girl consented.

child out of the possession of the mother, or any other person having the lawful charge thereof." (Con. Stat. C. c. 91, s. 28).

ABORTION.

An attempt to procure abortion is an offence at common law, and is made a felony by Consol. Stat. C. c. 91, s. 24, which enacts as follows: "Any person who with intent to procure the miscarriage of any woman, unlawfully administers to her, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or any means whatsoever with the like intent, shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years."*

ABUSE OF INFANTS.

UNDER TEN.—By Con. Stat. C. c. 91, s. 20, this offence is made a felony: "Any person who unlawfully and carnally knows and abuses any girl under the age of ten years, shall be guilty of felony, and shall suffer death as a felon."*

ABOVE TEN BUT UNDER TWELVE.—This is made a misdemeanour by Con. Stat. C. c. 91, s. 21, which enacts that "Any person who unlawfully and carnally knows and abuses any girl being above the age of ten years and under the age of twelve years, shall be guilty of a misdemeanour, and shall be imprisoned for such term as the court may award."†

* But few of the crimes punishable under this section are ever investigated, and therefore when a case does come before a justice, he should thoroughly examine it, and obtain all the evidence necessary to cause justice to be done. *Dying declarations* of the woman are not admissible as evidence. In proof of administering, it is necessary that the noxious drug should have entered the stomach; actual delivery by the hand of the prisoner is however not necessary. As proof of the *intent*, proof that the child would be chargeable to the prisoner as the reputed father, or proof of secrecy in administering, is good. (Roscoe's Crim. Evid. 251).

† Proof of penetration, however slight, will be sufficient to constitute the crime. (Roscoe's Crim. Evid. 848).

The justice who receives the information should learn as to whether or not

ACCESSORIES AND ABETTORS.

Aiders and abettors are all those who are present aiding and abetting where a felony is committed. (Roscoe's Crim. Evid. p. 184).

The acts hitherto in force with regard to accessories, aiders, and abettors, in indictable offences, viz.: Con. Stat. C. ch. 97 and 99, s. 43, are repealed by Stat. 27–28 Vic. c. 19, which enacts as follows:

As to Accessories to Felony before the Fact. — "2. Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at Common Law, or by virtue of any Act passed or to be passed, may be indicted, tried, convicted and punished in all respects as if he were a principal felon.

"3. Whosoever shall counsel, procure or command any other person to commit any felony, whether the same be a felony at Common Law, or by virtue of any Act passed or to be passed, shall be guilty of felony, and may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner

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the girl has been examined by a physician; and if he finds that she has not, he should at once cause her to be so examined. The girl should be asked as to how often, if more than once, she has been abused by the prisoner; and if upon more than one occasion, then the place where she was so abused each time should be stated. Though the witness may not be able to state the day of the month when so abused, she may be able to state some circumstance which may assist in fixing the date. If upon the trial of a case where there has been abuse on more than one occasion, the counsel for the crown neglects to put a count in the indictment charging the prisoner with each offence, he can give evidence of one offence only. The chief witness of the crown in such cases is of tender years, and if told upon her examination in chief that she can only state as to one occasion when she was abused, and is ably cross-examined by the counsel for the prisoner, as to circumstances in some way connected with the other occasions, she is likely to give evidence one portion of which may contradict another, and thereby raise a doubt sufficient to cause the acquittal of the criminal.

as any accessory before the fact to the same felony, if convicted as an accessory, may be punished."*

As to Accessories to Felony after the Fact.—"4. Whosoever shall become an accessory after the fact to any felony, whether the same be a felony at Common Law, or by virtue of any Act passed or to be passed, may be indicted and convicted, either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.

"5. Every accessory after the fact to any felony (except where it is otherwise specially enacted), whether the same be a felony at Common Law, or by virtue of any Act passed or to be passed, shall be liable at the discretion of the Court to be imprisoned

* An accessory *before* the fact is one who, being absent at the time of the offence committed, does yet procure, counsel, command or abet another to commit an offence. The bare concealment of a felony to be committed will not make a man an accessory, nor yet words indicating a mere permission, as, for example: "You may kill A, for all I care." If before the commission of the offence by the principal, the accessory countermands him, and yet the principal proceeds to do the deed, he who commanded him will not be an accessory. If the party was *present* when the offence was committed, he is not accessory, but principal. A person may become an accessory by the intervention of a third person, without direct communication between himself and the principal; so, where A tells his servant to hire some one to murder B, and the servant hires C, A is accessory to the murder of B. It is not necessary to prove that the degree of incitement was very great; for that it was sufficient to actuate the deed is proved by the result. It is also unnecessary to show that the crime was committed in consequence of that incitement; and it is no defence that the deed would have been committed, though the incitement had never taken place. Where the principal varies in committing the offence from the command or advice of the accessory, if the principal totally and substantially varies; if, being solicited to commit a felony of one kind, he *knowingly and wilfully* commits a felony of another, he will stand single in that offence, and the person soliciting will not be involved in the guilt. But if the principal *in substance* complies with the command, and varies only in the attendant circumstances, the person soliciting will be an accessory before the fact, and if present, a principal. For instance, A orders B to poison C, and B shoots C, A is accessory to the murder of C. Where the principal goes beyond the term of solicitation, *if in the event the felony committed was a probable consequence of the command*, the person giving such order will be an accessory. As, for example, A orders his servant to waylay and beat B, and B dies in consequence, A is accessory to the murder. (Roscoe's Criminal Evid. 185, and following pages.)

in the Common Gaol or House of Correction for any term not exceeding two years, with or without hard labour; and it shall be lawful for the Court, if it shall think fit, to require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to such punishment; provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year."*

As to Accessories generally.—"6. If any principal offender shall be, in any wise, convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die or be pardoned, or otherwise delivered, before attainder; and every such accessory shall, upon conviction, suffer the same punishment as he would have suffered if the principal had been attainted.

"7. Any number of accessories, at different times, to any felony, and any number of receivers, at different times, of property stolen at one time, may be charged with substantive felonies in the same indictment, and may be tried together,

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* An accessory *after* the fact is one who, knowing the felony to be committed by another, receives, relieves, comforts or assists a felon. The wife, however, does not become an accessory by receiving her husband after the commission of an offence; the husband, nevertheless, is made an accessory by so receiving his wife, for the relationship of the wife to the husband is the only one which is excepted. If husband and wife receive a felon, it shall be deemed the husband's act only, but if the wife alone, without her husband's knowledge, the wife alone is accessory.

Any assistance whatever given to a person known to be a felon, in order to hinder his being apprehended, tried or punished, as giving him a horse, or money, or food to aid his escape, or harbouring or concealing him, or procuring another to harbour or conceal him, makes a man an accessory after the fact. Any one who rescues a felon from imprisonment or punishment, or conceals such rescue or escape, or who conveys instruments to him to enable him to break gaol, is an accessory, Merely suffering a felon to escape before his arrest is not sufficient, nor is any attempt to obtain a pardon or release, or persuading witnesses against a felon not to give evidence, nor even agreeing for money not to give evidence. The felony must be complete at the time of the assistance given. So a person assisting another who had mortally wounded a third, before death ensued, was not accessory to the homicide. To make a man an accessory, he must have notice, express or implied, of the principal having committed a felony.

(With regard to trial and punishment of accessories, see Con. Stat. C. c. 103, s. 15, p. 76 of this work.)

notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

"8. Where any felony shall have been wholly committed within this Province, the offence of any person who shall be an accessory, either before or after the fact, to any such felony, may be dealt with, inquired of, tried, determined and punished by any Court which shall have jurisdiction to try the principal felony, or any felonies, committed in any county or place in which the act by reason whereof such person shall become such accessory, shall have been committed; and, in every other case, the offence of any person, who shall be an accessory, either before or after the fact, to any felony, may be dealt with, inquired of, tried, determined and punished by any Court which shall have jurisdiction to try the principal felony, or any felonies committed in any County or place in which such person shall be apprehended or be in custody, whether the principal felony shall have been committed on the sea or on the land, or begun on the sea and completed on the land, or begun on the land and completed on the sea, and whether within Her Majesty's dominions or without, or partly within Her Majesty's dominions and partly without; provided that no person who shall have been once duly tried, either as an accessory before or after the fact, or for a substantive felony, under the provisions hereinbefore contained, shall be liable to be afterwards prosecuted for the same offence.

As to Abettors in Misdemeanors.—"9. Whosoever shall aid, abet, counsel or procure the commission of any misdemeanor, whether the same be a misdemeanor at Common Law, or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted and punished as a principal offender."

Clerical Error corrected.—"11. The seventieth section of the said ninety-ninth chapter of the Consolidated Statutes of Canada, intituled: *An Act respecting the procedure in Criminal cases*, shall be construed and have effect as if instead of the words 'eighteenth and fifteenth,' the words 'twenty-

second and nineteenth' had been inserted therein when the said Act was passed; and as if, instead of the words 'sixteenth and seventeenth,' the words 'twentieth and twenty-first' had been inserted therein when the said Act was passed."

ACCOMPLICE.

A justice has no power to make a promise of pardon, and it is his duty to commit an accomplice for trial, though it is intended that he should give evidence for the prosecution. When the evidence would be too weak to justify a commitment, independently of the testimony of the accomplice, the proper course seems to be, to take the deposition of the accomplice in the usual way, cautioning him at the same time that he is not bound to say anything that may criminate himself. In this case the accomplice would be bound over as a witness.

AFFRAY.

An affray is the fighting of two or more persons, in some public place, to the terror of the Queen's subjects; for if the fighting be in private, it is not an affray, but an assault. It differs from a riot, in not being premeditated. Thus, if persons meeting at a fair, or on any other lawful occasion, happen on a sudden quarrel to engage in fighting, they are guilty of an affray only, not of a riot. Two persons may be guilty of an affray, but it requires three or more to constitute a riot. On a charge of affray, the prosecutor must prove: 1, the fighting, &c.; 2, that it was in a public place; 3, that it was to the terror of Her Majesty's subjects; 4, that two or more were engaged in it.

In the case of a prize fight, it was held to be neither a riot nor an affray, but only an assault; for, first, it took place on private property, at some distance from the highway; next, it was not to the terror of Her Majesty's subjects, for the spectators were evidently assembled for the express purpose of witnessing the fight; and lastly, the prisoners had quietly surrendered to the officers by whom they were arrested.

The punishment for a common affray is by fine and imprisonment; the measure of which must be regulated by the circumstances of the case. (Roscoe's Crim. Evid. 252.)

APPEALS.

The cases in which an appeal from a Magistrate's decision is allowed, and the conditions of such appeal, are determined by the following statutes:

APPEALS AGAINST CONVICTIONS.—In case any person thinks himself aggrieved by any conviction under the foregoing criminal acts, he may, within three days after such conviction, and seven days before the first Court of General Quarter Sessions for the district, held not sooner than twelve days next after such conviction or decision, give to the other party a notice in writing of his intention to appeal; and in case such person remains in custody until such Sessions, or enters into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at such Sessions, to abide the judgment and pay the costs awarded, such person may appeal to the Quarter Sessions; and the Court shall at such Sessions hear and determine the matter of appeal, and shall make such order therein, either with or without costs; and in case of dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction and to pay such costs as shall be awarded, and shall if necessary issue process for enforcing such judgment. (Con. Stat. C. c. 99, s. 117.)

PARTY ENTERING INTO RECOGNIZANCE TO BE LIBERATED.—Party entering into recognizance, on giving notice of appeal, is to be liberated. (*Ib.* s. 118.)

APPEALS TRIABLE BY JURY.—"In appeals made from the decision of any Justice, the Quarter Sessions has power to empannel a jury to try the matter; and the Court, on the finding of the jury under oath, shall give judgment, but shall not adjudge the payment of a fine exceeding the sum specified in the conviction in addition to the costs, or order the imprisonment of the person so convicted exceeding the time specified

in the conviction; and, unless otherwise specially provided, all fines recovered by such Court shall be applied and disposed of in the same manner as other fines imposed by a Justice of the Peace." (*Ib.* s. 119.)

APPEALS IN CASES OF SUMMARY CONVICTION. — "In case a person, complainant or defendant, thinks himself aggrieved by an order, decision or conviction before any Justice or Justices of the Peace, Mayor, or Police Magistrate, in any matter cognizable by such Justice or Justices of the Peace, Mayor, or Police Magistrate, not being a crime, then in case, within four days after the conviction, order or decision, and eight days before the first Quarter Sessions of the Peace to be held not sooner than twelve days next after such order, decision or conviction, the party aggrieved gives to the other party, or leaves with the convicting Justice for him, a notice in writing of his intention to appeal, and of the cause and matter thereof; and in case of an appellant in custody, if he either remains in custody until such Sessions, or enters into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned to appear at the said Quarter Sessions, and try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; or in case the appellant be on bail, if he enters into such recognizance as aforesaid; such appellant may appeal to such Court of Quarter Sessions, and such Court shall at such Sessions hear and determine the matter of such appeal, and make such order therein, with or without costs to either party, as to the Court seems meet: and in case of the dismissal of the appeal, or of the affirmance of the order, decision or conviction, the Court shall order and adjudge the order, decision or conviction to be enforced, and the appellant to pay such costs as may be awarded, and shall if necessary issue process for enforcing the judgment of the Court." (Con. Stat. U. C. c. 114, sec. 1.)

"In case a party in custody has given notice of appeal, and entered into a recognizance according to the provisions of the foregoing section, then the Justice before whom such recognizance was entered into shall liberate such party." (*Ib.* s. 2.)

"Whenever any appeal is made from the decision, order or conviction of any Justice, Mayor or Police Magistrate, the Court of Quarter Sessions appealed to shall, at the request of either appellant or respondent, empannel a jury to try the matter on which such decision has been made, and shall administer to such jury the following oath:—'You do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F., and a true verdict give, according to the evidence. So help you God.' And the Court, on the finding of such jury, shall thereupon give such judgment as the circumstances of the case require, not however exceeding the amount of penalty or period of imprisonment that might have been imposed or awarded under any law giving cognizance to the convicting Justice, Mayor or Police Magistrate." (*Ib.* s. 3.)

"Any appellant may abandon his appeal by giving the opposite party notice of such intention in writing six days before the Sessions appealed to; and thereupon the convicting Justice, Mayor or Police Magistrate may tax the respondent's additional costs, if any, and add the same to the original costs, and proceed on the original order, decision or conviction, in the same manner as if there had been no appeal thereon." (*Ib.* s. 4.)

"An appeal shall lie in like manner from all decisions, orders and convictions made by any Justice of the Peace, or by any person authorized to act in that capacity, upon complaints against any person for committing any offence against any by-law of any Municipal Council." (*Ib.* s. 5.)

"In this Act the words 'Quarter Sessions' include Recorder's Courts." (*Ib.* s. 6.)

APPEALS FROM QUARTER SESSIONS AND RECORDER'S COURTS.—"When a person has been convicted of any treason, felony or misdemeanor, before a Court of Oyer and Terminer, or Gaol Delivery, or Quarter Sessions, such person may apply for a new trial upon any point of law or question of fact, in as ample a manner as any person may apply to the Superior Courts of common law for a new trial in a civil action." (Con. Stat. U. C. c. 113, s. 1.)

"When the conviction takes place at a Court of Quarter Sessions, the application for a new trial shall be to such Court." (*Ib.* s. 6.)

"In such case, if the conviction be affirmed, a further appeal shall lie to either of the Superior Courts of common law." (*Ib.* s. 7.)

"In the event of such an appeal, the Court of Quarter Sessions shall state, in a case to be prepared by the appellant, and approved by the Court, and signed by the chairman or Recorder, the question or questions of law or fact upon which the new trial was applied for, together with the circumstances upon which the same arose, and the judgment of the Court, with the reasons therefor." (*Ib.* s. 8.)

"The case shall be transmitted by the Court of Quarter Sessions to one of the Superior Courts of common law, on or before the first day of the term of the Superior Court next after the time when the rule or order appealed from was made." (*Ib.* s. 9.)

"The judgment of the Superior Court on the appeal from the Quarter Sessions shall be final. (*Ib.* s. 10.)

"In this Act the words 'Quarter Sessions' include Recorder's Courts." (*Ib.* s. 18.)

ARREST.

The duty of a constable in case of arrest is clearly laid down in Con. Stat. C. c. 102, s. 25. (*Ante*, p. 35.)

How an Arrest is made.—In executing a warrant, the arrest is to be made by laying hold of, or at least securing, the person of the party to be arrested; for without this it is not a legal arrest.

Arrest of Offenders caught in the act.—"Any person found committing an offence, punishable either upon indictment or upon summary conviction, may be immediately apprehended by any peace officer, without a warrant, or by the owner of the property, on or with respect to which the offence is committing, or by his servant or any other person authorized

by such owner, and shall be forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law."* (Con. Stat. C. c. 99, s. 1.)

ARREST OF PERSONS IN POSSESSION OF GOODS SUPPOSED TO HAVE BEEN STOLEN.—"In case any person to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed, on or with respect to such property, he may, and if in his power, shall apprehend and forthwith carry before a Justice of the Peace the party offering the same, together with such property, to be dealt with according to law."† (*Ib.* s. 3.)

ARREST OF OFFENDERS CAUGHT IN THE ACT IN THE NIGHT.—"Any person may apprehend any other person found committing any indictable offence in the night, and shall convey or deliver him to some constable or other person, in order to his being taken, as soon as conveniently may be, before a Justice of the Peace, to be dealt with according to law."‡ (*Ib.* s. 4.)

WHEN A CONSTABLE MAY ARREST WITHOUT A WARRANT.—"Any constable or peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway or other place at night, whom he has good cause to suspect, and may detain such person until he can be brought before a Justice, and dealt with according to law." (*Ib.* s. 5.)

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* Persons who steal from gardens may and should be arrested under the first section, without warrant.

A constable who makes an arrest under this section before he has taken the oath of office, as directed by 23 Vic. c. 8, s. 2, is liable to an action. (See article "Constable.")

† When a person is brought before a Justice under the authority of this section, he should forthwith receive the statement of the person to whom the property was so offered in an information, and have him make oath to it; and if the stated value of the article offered be so much greater than the price asked, or any other circumstances raise a presumption of guilt, the prisoner should be remanded, and the constable instructed to advertise the property, or take other proceedings necessary to learn the name of the owner.

‡ While sections 1 and 3 confine the right to arrest to certain persons, this section enables any person to arrest a person found committing any indictable offence. By authority of this section, not only the police, but all others have the power to arrest persons committing in the night assaults, or carrying unlawful weapons (such as iron knuckles, scull-crackers, or pikes), or found unlawfully drilling.

DETENTION OF PERSONS ARRESTED. — "No person, having been apprehended as last aforesaid, shall be detained after noon of the following day, without being brought before a Justice of the Peace." (*Ib.* s. 6.)

ARRESTS FOR ALLEGED BREACHES OF THE PEACE.—"In case any person complains to a chief of police, or to a constable or bailiff, in a town or city, of a breach of the peace having been committed, and in case such officer has reason to believe that a breach of the peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing the same is necessary to prevent his escape, or to prevent a renewal of the breach of the peace, or to prevent immediate violence to person or property, then if the person complaining gives satisfactory security to the officer that he will without delay appear and prosecute the charge before the Police Magistrate, or before the Mayor or sitting Justice, such officer may, without warrant, arrest the person charged, in order to his being conveyed as soon as conveniently may be before the Magistrate, Mayor or Justice, to be dealt with according to law." (Con. Stat. C. c. 54, s. 393.)

ARSON.*

OF HOUSES CONTAINING PERSONS. — "If any person unlawfully and maliciously sets fire to any dwelling-house, any person being therein, such offender shall be guilty of felony, and shall suffer death." (Con. Stat. C. c. 93, s. 1.)

* The evidence in behalf of the Crown, in cases of arson, is invariably circumstantial; and when such a case comes before a Justice, he should, if necessary, adjourn the case from time to time, and allow the detective or constable time to bring out all possible evidence.

To prove arson there must be an actual burning, though it is not necessary that the flame should be visible. The burning must be malicious and wilful; therefore no burning from accident or carelessness can be indicted as arson. The result need not exactly correspond with the intent; for if a man sets fire to a haystack, and the fire communicates with the barn, he may be indicted for burning the barn. Setting fire to one's own house is a *felony*, if a neighbouring house catches fire from it, and one punishable with death, if there be any person in either house. It is a *misdemeanor* only when houses the property of, or

OF CHURCHES, &c.—"If any person unlawfully and maliciously sets fire to any church, chapel or meeting-house for the exercise of any mode or form of religious worship whatever; or unlawfully and maliciously sets fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them, respectively, be then in the possession of the offender, or in the possession of any other person, such offender shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 4.)

OF SCHOOL HOUSES, &c.—"If any person unlawfully and maliciously sets fire to any school-house, lecture-room, seminary of learning, college or building used for the purpose of education, or to any village, town or city hall, or to any steam or fire engine-house or toll-booth, or to any building used or employed as a mechanics' institute, or as a public library, or to any hall or building used by any body or society of persons, by whatever name or designation they may be known, and whether they are associated together for educational, philanthropic, or benevolent purposes, or for any other lawful purpose, or to any museum or repository of curiosities, such offender shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other

inhabited by, any other person, are endangered thereby, though there be no actual burning; but it is not punishable as arson to burn one's own house if it be entirely isolated and no person be within, even though the intent be thereby to defraud an insurance company. A tenant *in possession* is, in this offence, considered to be the owner of the house he occupies, and therefore cannot be indicted for arson; except only in such cases where a man may be indicted for burning his own house. But a mere residence without any interest in a house will not prevent its being considered the house of another: as, where a man sets fire to a house in which he resides without paying rent, he may be properly convicted of arson. In the term *house* is included not only the dwelling-house, but all outhouses, which are *parcel* thereof, though not adjoining to or under the same roof, such as barns, stables, &c. The setting fire to an unfinished house, though intended for a residence, does not constitute a felony. A gaol is considered a house within the statute.

prison or place of confinement for any term less than two years, and it shall not be necessary to allege or set out in the indictment the name of the owner of any such building." (*Ib.* s. 6.)

Of Ships. — "If any person unlawfully and maliciously sets fire to, casts away, or in any wise destroys any ship or vessel, either with intent to murder any person, or whereby the life of any person is endangered, such offender shall be guilty of felony, and shall suffer death." (*Ib.* s. 7.)

"If any person unlawfully and maliciously sets fire to, or in any wise destroys any ship or vessel, whether the same be completed or in an unfinished state, or unlawfully and maliciously sets fire to, casts away or in any wise destroys any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or the underwriter of any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, such offender shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any other term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 9.)

Of Haystacks, &c. — "If any person unlawfully and maliciously sets fire to any stack of corn, grain, pulse, straw, hay, peat, coal, charcoal or wood, or any steer of wood, such offender shall be guilty of felony, and shall be imprisoned in the Penitentiary for any term not more than seven years, nor less than two years, or be imprisoned in any prison or place of confinement for any term less than two years." (*Ib.* s. 12.)

Attempts to Burn.—"If any person unlawfully and maliciously by any overt act attempts to set fire to any building or vessel, or to any stack, or to any vegetable produce of such kind, and with such intent that if the offence were complete the offender would be guilty of felony, and liable to be imprisoned in the Penitentiary for any term not less than two years, he shall, although such building, vessel, stack or vegetable produce be not actually set on fire, be guilty of felony,

and shall be imprisoned in the Penitentiary for any term not exceeding seven years, nor less than two years, or be imprisoned in any common gaol for any term less than two years."* (*Ib.* s. 13.)

Of Railway Buildings. — "If any person wilfully and maliciously sets fire to any station-house, engine-house, warehouse, or other building belonging or appertaining to any railway, lock, canal, or other navigation, or to any goods or chattels being in any building, the setting fire to which is made felony by this or any other Act of Parliament, such offender shall be guilty of felony, and shall be punished as in the last preceding section is mentioned."† (*Ib.* s. 32.)

Of Dockyards, &c.—"If any person within Upper Canada wilfully and maliciously sets on fire, or burns or otherwise destroys, or causes to be set on fire or burnt or otherwise destroyed, or aids, procures, abets or assists in the setting on fire or burning, or otherwise destroying, any of Her Majesty's ships or vessels of war, whether on float or building or begun to be built in any of Her Majesty's dockyards, or building or repairing by contract in any private yard for the use of Her Majesty, or any of Her Majesty's arsenals, magazines, dockyards, rope yards, victualling offices, or any of the buildings erected thereon or belonging thereto, or any timber or materials there placed for building, repairing or fitting out of ships or vessels, or any of Her Majesty's military, naval or victualling stores, or other ammunition of war, or any place or places where any such military, naval or victualling stores or other ammunition of war is or are kept, placed or deposited, such offender is guilty of felony, and shall suffer death." (Con. Stat. U. C. c. 97, s. 13.)

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* Offences under this section are not triable at Quarter Sessions or Recorder's Court.

† The punishment prescribed is imprisonment in the Penitentiary for not less than three nor more than seven years.

ASSAULT.

Assaults are usually divided into two classes: *common* and *aggravated.*

I. Common Assault is described by Russell to be an attempt or offer with force or violence to do a corporal injury to another, and may consist of an act tending to such injury, accompanied by circumstances denoting an *intent*, coupled with *present ability*, to use violence against the person.

What amounts to an Assault.—To constitute an assault, it is not necessary that there should be a direct attempt at violence.

If a person presents a gun or pistol, purporting to be a loaded gun or pistol, so near as to produce danger to life or limb were the gun or pistol to go off, it is an assault, though the gun or pistol be not loaded.

There may be an assault by exposing a child, or a person under the control of the assaulting party, to the cold. Forcible confinement, or false imprisonment, is an assault. A master taking improper liberties with a female scholar, without her consent, though she does not resist, is guilty of an assault. So a medical practitioner who had sexual intercourse with a young girl under sixteen, ignorant of the nature of the act, though she made no resistance, was convicted of assault. If two parties go out to strike one another, and do so, it is an assault in both, and it is no matter which strikes the first blow.

A *battery* is when an injury is *actually committed* in an angry, revengeful, spiteful, rude or insolent manner. One charged with assault and battery may be convicted of the assault and yet acquitted of the battery; but every battery includes an assault: therefore, on an indictment where the assault is ill laid, it will be sufficient to prove the battery. The injury need not be effected directly by the hand of the party. Thus, encouraging a dog to bite, riding over a person with a horse, or injuring persons in a carriage by wilfully driving against or upsetting it, constitutes an assault. So, where a person threw a lighted squib in a market-place, which, being tossed from hand to hand, at last put out the plaintiff's

eye, the party who first threw it was held guilty of an assault. Pushing a drunken man against another person, so as to injure him, is also an assault.

What does not amount to an Assault.—1. No mere *words* constitute an assault. 2. *Accidentally* striking or injuring, does not make an assault. An injury received in a lawful and *amicable* contest, as with cudgels, &c., by *consent*, will not amount to a battery. 3. *Lawful chastisement*, as of a child by its father, or a scholar by the teacher, is no assault. But it is necessary that the chastisement should be reasonable. 4. A blow or other violence made necessary for *self-defence* by the violence of another, is no battery.* But if the violence used be more than necessary to repel the assault, the party thus becomes in his turn the assailant, and may be convicted of an assault. 5. A husband may justify an assault in defence of his wife, a parent of his child, a master of his servant; or *vice versa*, a wife in defence of her husband, &c. 6. *Interference to prevent a breach of the peace*, or the commission of a felony, justifies a battery. 7. *Defence of possession* justifies a battery. So that where a man enters an enclosure, or lays hands on the goods of another, the owner of the property should first request the trespasser to depart or desist, and if he refuses, gently attempt to remove him, and if he resist with force, then force may be used in return, sufficient to expel him. But the owner would not be justified in assaulting in the first instance, unless the trespass were accompanied with violence. 8. A constable or other peace officer, or a sheriff's officer, may

* In a late case which came before the sessions for York and Peel, it came out in evidence, upon the trial of the prisoner, that the constable who made the arrest beat the prisoner upon the head with a pair of handcuffs. The constable being present, the Judge, immediately upon the close of the trial, ordered the clerk to enter an order of the court, striking the name of the constable from the list of county constables.

If A. first lifts his hand, either with or without any instrument, to strike B. it is a sufficient assault to justify B. striking A.: but in such a case B. must not use a greater degree of force than is necessary, for if he do he may be convicted of an assault.

When a magistrate is making a preliminary inquiry, for the purpose of ascertaining whether there are sufficient grounds to commit a party for trial, no person has a right to be present, and consequently the magistrate may justify laying hands upon a person who refuses to leave the room where the inquiry is being made, in order to turn him out.

ustify laying hands on a party to arrest him; but only the necessary force can be justified. Any unnecessary violence may be considered an assault.

II. Aggravated Assaults.—1. Assaults with intent to commit felony. 2. An assault on a peace officer, or other crown officer, in the discharge of his duties.* 3. Assaults committed in pursuance of a conspiracy to raise the rate of wages, as in a laborers' strike. Of this last kind are the disturbances which took place during the late carters' strike at Montreal, in which the truckmen of the Grand Trunk Railway Company were assaulted by the carters.

Summary proceedings in cases of Assault.—"If any person unlawfully assaults or beats any other person, any Justice of the Peace, upon complaint of the party aggrieved praying him to proceed summarily under this Act, may hear and determine such offence."† (Con. Stat. C. c. 91, s. 37.)

"The offender, upon conviction before such justice, shall forfeit and pay such fine as may to him appear meet, not

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* "In case of the conviction of any person for assaulting a sheriff or other peace officer in the execution of his duty, the person convicted of any such offence may be sentenced to be imprisoned only, or imprisoned and kept to hard labour, or in solitary confinement, in the common gaol or house of correction, for any period less than two years, or may be imprisoned at hard labour in the Penitentiary for any term not less than two and not exceeding seven years." (Con. Stat. U. C. c. 115, s. 1.)

† It has been decided in several cases in sessions, that it must appear upon the face of the conviction that the aggrieved party prayed the justice to proceed summarily; for without the prayer, the justice has no jurisdiction to try the case, and must investigate and send it for trial at the next court of competent jurisdiction, or dismiss the case. The prayer should be in the complaint; and if not there, the justice should not summarily try the case, as it is very doubtful as to whether or not, in the event of an action being brought against him by the defendant, he could show that he had authority.

No other person than the party aggrieved can pray to have the case disposed of summarily; and therefore, in a case where an assault is made upon a child unable to make the complaint, the justice cannot legally summarily proceed.

In a late case of *The Queen* v. *Willoughby*, in which application was made to the Queen's Bench to quash the conviction of the justices, upon the grounds that Mr. Campion, the party aggrieved, did not pray to have the case summarily disposed of, it appeared that the defendant had admitted the assault, and asked to have the case disposed of, and that the justices did so, and fined him; that Mr. Campion, the party aggrieved, made a complaint to the government, and that instructions were given to apply to the court to quash the conviction. The conviction was quashed; and at the fall assizes for York and Peel, for 1861, Willoughby was tried and found guilty of an aggravated assault.

exceeding (together with costs, if ordered,) the sum of twenty dollars." (*Ib.* s. 38.)

"Such fine shall be paid to the treasurer of the municipality in which the offence was committed, and shall make part of the funds thereof; or, if the conviction be had in a place not within any municipality, the fine shall be paid over to such officer, and be applicable to such purposes as other fines and penalties not specially appropriated."* (*Ib.* s. 39.)

"The evidence of any inhabitant of the municipality or place interested as aforesaid, shall be admitted in proof of the offence." (*Ib.* s. 40.)

"If the fine awarded by the said justice, together with the costs (if ordered) be not paid, either immediately after the conviction, or within such period as the said justice at the time of the conviction appoints, he may commit the offender to the common gaol or house of correction, there to be imprisoned for any term not exceeding two months, unless such fine and costs be sooner paid." (*Ib.* s. 41.)

"If the justice, upon the hearing of any such case, deems the offence not proved, or finds the assault or battery justified, or so trifling as not to merit any punishment, he shall dismiss the complaint with or without costs, in his discretion, and shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint has been preferred." (*Ib.* s.42.)

"If costs be ordered upon such dismissal, and such costs be not paid immediately or within such period as such justice at the time of the dismissal appoints, he shall issue his warrant to levy the amount thereof within a certain time to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount of such warrant can be found, he shall commit the party ordered to pay the costs to the common gaol of the district, county or division, where the offence was alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs be sooner paid." (*Ib.* s. 43.)

* The "treasurer" mentioned in this section, is the same treasurer mentioned in Con. Stat. C. c. 102, sec. 51 (see page 45) and is the treasurer of the county.

"If the person against whom such a complaint has been preferred for a common assault or battery, obtains such certificate as aforesaid, or having been convicted, pays the whole amount adjudged to be paid under such conviction, or suffers the imprisonment awarded for non-payment thereof, he shall be released from all further or other proceedings, civil or criminal, for the same cause." (*Ib.* s. 44.)

"In case the Justice finds the assault or battery complained of to have been accompanied by any attempt to commit felony or is of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done had no such summary jurisdiction been conferred upon him."* (*Ib.* s. 45.)

"Nothing in the last section contained shall authorize any justice of the peace to hear and determine any case of assault or battery in which any question arises as to the title to any lands, tenements or hereditaments, or any interest therein, or accruing therefrom, or as to any bankruptcy or insolvency, or as to any execution under the process of any court of justice." (*Ib.* s. 46.)

Assaults on Persons apprehending Offenders by night.—"If any person found committing an indictable offence in the night and apprehended thereon, assaults or offers any violence to any person by law authorized to apprehend or detain him, or to any person acting in the aid or assistance of the person so authorized, such offender shall be guilty of a misdemeanor, and shall be imprisoned with or without hard labour for any term not exceeding two years." (*Ib.* s. 36.)

Assaulting Seamen, and Persons dealing in Grain.—"Any person who unlawfully and with force—1. Hinders

* When the justice finds that the blow was struck upon the head or some other vital part, or with some deadly weapon; or that the assault was made by an able-bodied person upon a person who, from age or other cause, was not his equal, the case should not summarily be disposed of, but the prisoner should be sent to prison, or required to give sufficient sureties for his appearance to take his trial at the next sessions.

any seaman from working at or exercising his lawful trade, business or occupation, or beats, wounds, or uses any other violence to him with intent to deter or hinder him from working at or exercising the same; 2. Beats, wounds, or uses any other violence to any person, with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal or malt, in any market or other place; 3. Beats, wounds, or uses any other violence to any person having the care or charge of any wheat or other grain, flour, meal, or malt, whilst on its way to or from any city, market-town, or other place, with intent to stop the conveyance of the same: may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labor in the common gaol or house of correction for any term not exceeding three months." (*Ib.* s. 33.)

"No person having been punished for any such offence by virtue of the foregoing provision, shall be punished for the same offence by virtue of any other law whatsoever." (*Ib.* s. 34.)

Assaulting a Clergyman.—"Any person who upon any civil process arrests any clergyman or minister of the gospel while he is performing divine service, or who so arrests him while he is going to perform the same, or while he is returning from the performance thereof, knowing that he is so going or returning, shall be guilty of a misdemeanour, and shall suffer such punishment by fine or imprisonment, or by both, as the court shall award." (*Ib.* s. 35.)

Impeding Shipwrecked Persons, &c.—"Any person who by force prevents or impedes any person endeavouring to save his life from any ship or vessel in distress, or wrecked, stranded, or cast on shore (whether he be on board of or has quitted the same), shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 31.)

"Any person who assaults and strikes or wounds any magistrate, officer, or other person lawfully authorized, on account of the exercise of his duty in or concerning the preserva-

tion of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of felony, and be imprisoned in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 32.)

Assault with intent to commit Rape, &c.—"Any person who commits an assault with intent to commit rape, or an assault with intent to commit the abominable crime of buggery either with mankind or with any animal, shall be imprisoned in the Penitentiary for any term not exceeding three nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 23.)

Assault with intent to Rob.—"Any person who assaults any other person with intent to rob, shall be guilty of felony, and (except in cases where a greater punishment is provided by this act) shall be imprisoned in the Penitentiary for any term not exceeding three years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* c. 92, s. 3.)

"Any person who with menaces or by force, demands any chattel, money, or valuable security, of any other person, with intent to steal the same, shall be guilty of felony, and shall be imprisoned in the Penitentiary for any term not exceeding three years, or in any other prison or place of confinement for any term less than two years." (*Ib.* s. 4.)

"Any person who being armed with any offensive weapon or instrument, robs, or assaults with intent to rob any person, or together with one or more person or persons robs, or assaults with intent to rob any person, or robs any person, and at the time of or immediately before or immediately after such robbery, beats, strikes or uses any other personal violence to any person, shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other

prison or place of confinement for any term less than two years." (*Ib.* s. 5.)

On Bailiffs, &c., of Division Courts.—"If any officer or bailiff, or his deputy or assistant, be assaulted while in the execution of his duty, or if any rescue be made or attempted to be made of any property seized under a process of the court, the person so offending shall be liable to a fine not exceeding twenty dollars, to be recovered by order of the court, or before a Justice of the Peace of the county or city, and to be imprisoned for any term not exceeding three months; and the bailiff of the court, or any peace officer, may in any such case take the offender into custody (with or without warrant) and bring him before such court or Justice accordingly."* (Con. Stat. U. C. c. 19, s. 184.)

The following is the form of conviction given in sec. 189:

Be it remembered, That on this ——— day of ——— in the year of our Lord ——— A. B. is convicted before (*me, one*) of her Majesty's Justices of the Peace for the county of ——— acting under the Division Courts' Act, of having (*note the offence*); and I (*or* we) ——— the said Justice (*or* Justices) do adjudge the said A. B. to forfeit and pay for the same the sum of ——— (*or* to be committed to the common gaol of the county of ——— for the space of ———.

Given under (*my*) hand and seal, the day and year aforesaid.

J. S. [L. S.]

ATTEMPTS TO COMMIT OFFENCES.

At common law, every attempt to commit a felony or misdemeanor is in itself a misdemeanor. So long as the act rests in bare intention, it is not punishable; but if that intention be unequivocally manifested by any overt act, then it becomes an offence cognizable by the law. And the mere soliciting another to commit an offence is a sufficiently overt act to constitute such an attempt, though such solicitation may not have actually been acted upon. But many attempts to commit offences are offences by statute. Most of them would be misdemeanors at common law, but by statute either severe punishments are

* The justice may summon, with or without information in writing, the party complained of, hear and determine the matter of complaint, convict on proof, adjudge payment of penalties, and proceed to recover the same. (See *Ib.* s. 188.)

attached to them, or they are even made independent felonies.* (Roscoe's Crim. Evid. 278.)

With regard to attempts at felony in general, Con. Stat. C. c. 99, s. 68, enacts as follows:

"If on the trial of any person charged with any felony or misdemeanor, it appears to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same; and thereupon such person shall be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the indictment."†

ATTORNEY.

In summary proceedings, the complainant and defendant are both entitled to conduct their case, and have all witnesses examined and cross-examined by themselves, or by their counsel or attorney; and the court is an open one. (Con. Stat. C. c. 103, ss. 29, 30. See *ante* p. 81.) In *indictable* offences the statutes

* The remarks of Chief Baron Pollock, on an attempt at arson, are so applicable to the general subject at present under consideration, that we quote them in full:—"It is clear," said he, "that every act committed by a person with a view of committing the felonies therein mentioned, is not within the statute; as, for instance, buying a box of lucifer matches with intent to set fire to a house. The act must be one immediately and directly tending to the execution of the principal crime, and committed by the prisoner under such circumstances that he has the power of carrying his intention into execution. If two persons were to agree to commit a felony, and one of them were, in the execution of his share in the transaction, to purchase an instrument for the purpose, that would be a sufficient overt act in an indictment for conspiracy, but not in an indictment of this nature." And on an indictment for burglary and stealing certain goods, which were shown not to have been in the house at the time of the entry, Chief Justice Cockburn held that the prisoners could not be convicted of attempting to steal those goods: "I think," said he, "*attempting* to commit a felony is clearly distinguishable from *intending* to commit it. An attempt must be to do that which, if successful, would amount to the felony charged."

† If this section were explained to the jury upon the trial of prisoners charged with abusing female children, or other offences, where it is difficult to satisfy the jury that the offence was complete, many criminals who are very improperly acquitted would be convicted.

do not anywhere give the accused the same privilege; and it is questionable whether he can claim the assistance of counsel or attorney as a *right*, although this is usually allowed by the magistrate. Neither, in indictable offences, is the place where the examination is taken to be deemed an open court. (Con. Stat. C. c. 102, s. 36. See *ante* p. 39.) It is entirely in the discretion of the justice to prohibit any person being present, if it appear that the ends of justice will be best answered by such a course.

BAIL.

Bail (from the French *bailler*, to deliver) signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him that he shall appear at a day limited, to answer and be justified by the law. It is a delivery or bailment of a person to his sureties, upon their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to prison.

The fullest instructions with regard to bail are given in Con. Stat. C. c. 102, ss. 48, 52, 56, 63, 44. (See *ante*, pp. 43, 45, 47, 63.)

BIGAMY.

"Any person who, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in this province or elsewhere; and every person who counsels, aids, or abets such offender, shall respectively be guilty of felony; and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (Consol. Stat. C. c. 91, s. 29.)

"Nothing in the last section contained shall extend,—

"*Firstly.*—To any second marriage contracted out of this province by any other than a subject of Her Majesty resident in this province, and leaving the same with intent to commit the offence; or

"*Secondly.*—To any person marrying a second time, whose husband or wife had been continually absent from such person for the space of seven years then last past, and was not known by such person to be living within that time; or

"*Thirdly.*—To any person who, at the time of such second marriage, had been divorced from the bond of the first marriage; or

"*Fourthly.*—To any person whose former marriage had been declared void by the sentence of any court of competent jurisdiction." (*Ib.* s. 30.)

It should be remembered that neither the first and lawful wife, nor the first and lawful husband, are competent witnesses in proof of the marriage. If any person marry a woman within the prohibited degrees of consanguinity or affinity, his first wife being alive, it is nevertheless bigamy.

The first wife is not a competent witness for or against the prisoner, but the second wife is.

BRIBERY.

At Elections, &c.—*By Candidates.*—The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

1. "Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election;

2. "Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or to endeavour to procure any office, place or employment to or for any voter, or to or for any person on behalf of

any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election;

3. "Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election;

4. "Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election;

5. "Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or re-payment of any money wholly or in part expended in bribery at any election;

"And any person so offending shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, with full costs of suit: Provided always, that the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payment for the fair cost of printing and advertising, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this act." (23 Vic. c. 17, s. 1.)

By Voter.—"The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

1. "Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan

or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election;

2. "Every person who shall after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting at any election;

"And any person so offending shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, with full costs of suit." (*Ibid.* s. 2.)

Hiring Vehicles.—Hiring or promising to pay, or paying for any horse, team, carriage or other vehicle by any candidate, or by any person on his behalf, to convey voters to the poll, is illegal; and the person so ordering shall forfeit the sum of thirty dollars for each offence, and full costs of suit. Any elector hiring horses or vehicles to any candidate or his agent for such purpose, shall be *ipso facto* disqualified from voting at such election, and shall forfeit the sum of thirty dollars for each offence to any person who shall sue for the same. (See *ibid.* s. 3.)

Violence, &c.—"Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of any force, violence or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm or loss, or in any manner practise any intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent devise or contrivance, impel, prevent or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce or prevail upon any voter either to give or refrain from giving his vote at any election, shall be deemed to have committed the offence of *undue influence*, and shall be

guilty of a misdemeanor, and be liable to forfeit the sum of two hundred dollars, to any person suing, with full costs of suit." (*Ib.* s. 4.)

BUGGERY.*

"Every person guilty of the abominable crime of buggery, committed either with mankind or with any animal, shall suffer death as a felon." (Con. Stat. C. c. 91, s. 22.)

BURGLARY.

Burglary is a felony at common law, and a burglar is defined by Lord Coke as "he that in the night time breaketh and entereth into the mansion-house of another, of intent to kill some reasonable creature, or to commit some other felony within the same, whether his felonious intent be executed or not."

"Any person who burglariously breaks and enters any dwelling-house, and assaults with intent to murder any person being therein, or stabs, cuts, wounds, beats or strikes any such person, shall be guilty of felony, and shall suffer death."† (Con. Stat. C. c. 92, s. 8.)

"Any person who commits the crime of burglary shall be imprisoned in the Penitentiary for the term of his natural life,

* Penetration, however slight, is sufficient to constitute the crime (Con. Stat. C. c. 99, s. 70). It is not necessary to prove that the offence was committed against the will of the party assaulted; and if that party be consenting, both are guilty of the offence. If committed on a boy under fourteen, it is felony in the agent only; and so if a man induced a boy under fourteen to have carnal knowledge of his person, the man was convicted, as alone guilty of the offence. The offence committed on a woman is indictable. A married woman who consented to her husband's committing the offence on her, was held guilty of the offence. Proof that the prisoner is addicted to such practices, is not admissible. If the evidence be insufficient to prove sodomy, the prisoner may yet be convicted of the attempt.

† The evidence on a charge under this section of the statute will be the same as that required for simple burglary, for which see following notes; and in addition the prosecutor must prove either that the prisoner assaulted some person, *then being in the house*, with intent to murder, which intent may be inferred from the circumstances, or that the prisoner stabbed, cut, wounded or beat or struck some person.

or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years."* (*Ib.* s. 9.)

* On a trial for burglary, the prosecutor must prove—1. The breaking; 2. The entering; 3. That the house entered was a dwelling-house; 4. That the breaking and entry were in the night time; 5. That the breaking and entry were with the intent to commit a felony.

1. *Actual breaking.*—Such a breaking as is implied by law in every unlawful entry on another's possession, open or closed, will not satisfy the words *feloniously and burglariously*, except in cases where it is accompanied by circumstances which make it as heinous as an actual breaking. Entering through an open door or window is not burglary; but if, after such entry, an inside or chamber door be unlocked or unlatched, it is burglary. Breaking a window, unfastening a pane of glass, drawing a latch, when there is no other fastening, putting back the lock a door or fastening of a window with an instrument, turning the key where the door is locked inside, or picking a lock, or unloosing any fastening the owner has provided: these are all proofs of a burglary. Where the prisoner, having entered by an open back-door, broke open a chamber-door, and stole goods out of the chamber, and then unbolted the street-door and went out, he was convicted of burglary. So where the servants and master slept in different parts of the house, the stair-foot door of the master's chamber being latched, and a servant unlatched it, and entered the master's room to murder him, he was convicted of burglary with intent to murder. Raising a window which is sufficiently open to allow of its being raised further, is no breaking; but inserting the hand through a broken pane to unfasten a hasp or lock is a breaking. An entry through a chimney is burglary, for it is as much enclosed as possible: not so, however, an entry through a hole in the roof for letting in air. Breaking fixtures, cupboards, chests, &c., is not burglary. Breaking through or overleaping a gate or fence is not burglariously breaking or entry.

Constructive breaking may be by fraud, conspiracy or threats, though the owner himself admit the offender, and renders the offender equally guilty as if the breaking had been by force. So, where persons took lodgings in a house, and then fell on the landlord and robbed him, they were convicted of burglary. And where A., servant of B., conspired with C. to admit him to rob B., it was held to be burglary in both. And again, where the offenders actually obtained an entrance by threats, it was held to be burglary; but only robbery where the owner threw his purse out of the window to the prisoners, in consequence of their threats. So parties who assisted in the breaking were held guilty of the burglary, though not anywhere in the neighbourhood at the time that the robbery was committed. The breaking may be either in the entry or exit.

2. *Proof of entry.*—Where no part of the offender's body enters, but he introduces an instrument, whether that introduction constitutes burglarious entry, depends on the object for which it was effected, If with intent to commit a felony, it will amount to an entry; as where a person uses a hook or other instrument to steal, or a pistol to kill, through a window, though his hand be not in. But where the instrument was introduced only to effect an entry, as a centre-bit, it was held to be no entry; and the same where the inside shutter had been forced open with a crowbar introduced through the window, the sash of which the prisoners threw open, but without the hand being introduced. Discharging the contents of a loaded gun or pistol into a house, though no part of the weapon be introduced, is a burglarious entry with intent to murder. It is not always necessary to prove entry by all the prisoners.

For instance, if A. and B. keep watch, while C. breaks into the house, all are guilty of burglary, and all are principals. Again, where a man puts a child of

"The night, so far as the same is essential to the offence of burglary, shall commence at nine of the clock in the evening of each day, and conclude at six of the clock in the morning of the next succeeding day; and if any person enters the dwelling of another with intent to commit felony, or being in

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tender years in at a window, and the child takes and delivers goods to him, the man alone is guilty of burglary.

3. *What constitutes a dwelling-house.*—Every house for the dwelling and habitation of man is taken to be a dwelling-house wherein burglary may be committed. A mere tent or booth in a market or fair is not a dwelling-house. But where such booth was a permanent one of mud and brick, having doors and windows bolted inside, and occupied by the owner and his wife every night during the fair (during one of which it was broken into), this was held to be a dwelling-house. The mere fact of a building in the neighbourhood of a dwelling-house being occupied with the dwelling-house by the same tenant (not taking into consideration whether it is in the curtilage), will not render the former building a *dwelling-house.* The prisoner broke into and entered an outhouse occupied by a person along with a dwelling-house, but not enclosed within the same fence, he was not held guilty of burglary. Where a man puts his servants into an outhouse, not connected with the house by any internal communication, nor enclosed within the same enclosure, nor under the same roof, it was held not to be a dwelling-house. It must appear also that the premises were occupied, *at the time of the offence,* as a *dwelling-house.* Therefore, an unfinished house, which has never been occupied, though intended for a dwelling-house, is not considered to be one within the statute; and in one case, though such house was occupied by a carpenter for its protection, but the owner had not yet entered it, it was not held to be a dwelling-house. So a detached workshop or place of business is not considered as a dwelling-house, though occupied by a servant for the protection of goods therein contained. So, though the owner occupy a room adjoining the shop during the day time, but do not sleep therein, it is not a dwelling-house. But a house is no less a dwelling-house, because at certain periods the occupier quits it, or quits it for a temporary purpose. In the case of a house divided without internal communication, and occupied by *several,* unless *both* parts of such house be occupied as a dwelling-house (as above defined), it is not burglary to break into the unoccupied part; but if the whole be occupied by the same person, though part of it be occupied only in the day-time, it is burglary to break into either part. Although in the case of lodgers, who hold under one general occupier, the whole of the house continues to be the dwelling-house of such general occupier, the parties having only a single entrance, it is otherwise where several parts of the building are let under different leases. Where a man occupies the same house with his lodgers, and has but one entrance with them, the house is considered as his. But where he and his lodgers enter by different entrances, the lodgers are considered as the owners of the part they inhabit. It is sufficient to prove that the house was occupied by any part of the prosecutor's family. An agent or clerk employed in a public office, or by persons in trade, is in law the servant of those parties, and if he be suffered to reside on the premises which belong to the government or to the individuals employing him, the premises cannot be described as his dwelling-house. If a person let off part of his house, but do not dwell in the part reserved, the part let is the dwelling-house of the tenant, but the part reserved is not the dwelling-house of the tenant. A man cannot be indicted for burglary in his own dwelling. Therefore if the owner of a house break and enter the room of a lodger, and steal his goods, he can only be convicted of the larceny.

4. With regard to proof of the offence having been committed *in the night time,* it is necessary to prove that *both breaking and entry* were effected within the

such dwelling house, commits any felony, and in either case breaks out of the said dwelling house in the night time, such person shall be guilty of burglary."* (*Ib.* s. 10.)

"Any person who steals any chattel, money or valuable security in any dwelling house, and by any menace or threat puts any one, being therein, in bodily fear, shall be guilty of felony, and shall be imprisoned in the Penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 11.)

"No building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed a part of such dwelling-house for the purpose of burglary, or for any of the purposes aforesaid, unless there be a communication between such building and dwelling-house, either immediate, or by means of a covered and inclosed passage leading from the one to the other." (*Ib.* s. 12.)

"In case any person breaks and enters any building, and steals therein any chattel, money or valuable security, such building being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, and be convicted thereof (either upon an indictment for the same offence, or upon an indictment for burglary, house breaking or stealing to the value of five pounds sterling, or $24 33⅓ cents, in a dwelling-house, containing a separate count for each such offence), he

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hours specified. Therefore, if the prisoner had provided the means for his entry before the hour of nine (as, for example, by leaving a window open, &c.), the entry alone after that hour would not constitute burglary.

5. With regard to proof of the *intent*, it would be fatal to specify a felony of one kind (as murder, for instance), and only be able to prove one of another (as larceny).

Lastly, if the prosecutor fail to prove burglary, the prisoner may be convicted of the minor offence, as of larceny.

* With regard to proof of the *breaking out*, the following cases have been decided: It is not sufficient to prove that the prisoner broke *to* get out, but it must appear that he actually *broke out*. And where a lodger in the prosecutor's house got up in the night and unbolted the back door and went off with goods belonging to the prosecutor, he was convicted of burglary; and none the less so, though he was *lawfully* in the house as a lodger.

shall be imprisoned in the Penitentiary for any term not exceeding fourteen years, nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 13.)

"Any person who breaks and enters any shop, warehouse or counting-house, and steals therein any chattel, money or valuable security, shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned." (*Ib.* s. 14.)

"Any person—1. Who is found by night armed with any dangerous or offensive weapon or instrument, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein; and 2. Any person who is found by night, having in his possession, without lawful excuse, any picklock, key, crow, jack, bit, or other implement of house-breaking, or any match or other combustible or explosive substance; and 3. Any person who is found by night, having his face blackened or otherwise disguised with intent to commit felony; and 4. Any person who is found by night in any dwelling-house or other building whatsoever, with intent to commit any felony therein, shall respectively be guilty of misdemeanor, and shall be imprisoned in the Penitentiary for two years, or in any other prison or place of confinement, with or without hard labor, for any time less than two years." (*Ib.* s. 15.)

"The time at which the night commences and concludes in any offence against the provisions in the last section mentioned, shall be the same as in cases of burglary." (*Ib.* s. 16.)

"Any person who breaks and enters any church or chapel, and steals therein any chattel, or having stolen any chattel, money, or valuable security in any church or chapel, breaks out of the same, shall be imprisoned in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 17.)

BY-LAWS—OFFENCES AGAINST.

BY MUNICIPAL OFFICERS.—"In case any officer of a Municipal Corporation neglects or refuses to carry into effect a by-law for paying a debt, and so neglects or refuses under colour of a by-law illegally attempting to repeal such first-mentioned by-law, or to alter the same so as to diminish the amount to be levied under it, such officer shall be guilty of a misdemeanor, and be punished by fine or imprisonment, or both, at the discretion of the court whose duty it may be to pass sentence upon him." (Con. Stat. C. c. 54, s. 204.)

SUMMARY CONVICTIONS UNDER BY-LAWS.—"In case an offence be committed against a by-law of a Council, for the prosecution of which offence no other provision is made, any Justice of the Peace having jurisdiction in the locality where the offender resides, or where the offence was committed, whether the Justice is a member of the Council or not, may try and determine any prosecution for the offence." (*Ib.* s. 205.)

"The Justice or other authority before whom a prosecution is had for an offence against a municipal by-law, may convict the offender on the oath or affirmation of any credible witness, and shall award the punishment or penalty imposed by the by-law, with the costs of prosecution; and may, by warrant under the hand and seal of the Justice or other authority, or in case two or more Justices act together therein, then under the hand and seal of one of them, cause any pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender." (*Ib.* s. 206.)

"In case there can be no distress found, out of which the penalty can be levied, the Justice may commit the offender to the common gaol, house of correction, or nearest lock-up house, for the term specified in the by-law." (*Ib.* s. 207.)

"When the pecuniary penalty has been levied, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the Corporation, unless the prosecution is brought in the name of the Corporation, and in that case the whole of the pecuniary penalty shall go to the Corporation." (*Ib.* s. 208.)

"The Police Magistrate, or, when there is no Police Magistrate, the Mayor of a town or city, shall have jurisdiction, in addition to his other powers, to try and determine all prosecutions against the by-laws of the town or city, and for penalties for refusing to accept office therein, or to make the necessary declarations of qualification and office." (*Ib.* s. 209.)

"It shall not be necessary, in any conviction made under any by-law of any Municipal Corporation in Upper Canada, to set out the information, appearance or non-appearance of the defendant, or the evidence or by-law under which the conviction is made, but all such convictions may be in the form given in the schedule of this act." (27 Vic. c. 18, sec. 1.)

"In prosecuting under any by-law, or for the breach of any by-law, witnesses may be compelled to attend and give evidence on summary proceedings before Justices of the Peace, in cases tried summarily under the statutes now in force in Upper Canada." (*Ib.* s. 2.)

"Every Justice of the Peace for a county shall have jurisdiction in all cases arising under any by-law of any municipality in such county." (*Ib.* s. 3.)

"The word 'county,' in this act and in the schedule thereof, shall include 'united counties.'" (*Ib.* s. 4.)

FORM.

Province of Canada, County of ——, To wit. } Be it remembered, that on the —— day of —— A.D. ——, at ——, in the county of ——, A. B. is convicted before the undersigned, one of Her Majesty's Justices of the Peace in and for the said county; for that the said A.B. (*stating his offence, and time and place when and where committed*), contrary to a certain by-law of the Municipality of the —— of ——, in the said county of ——, passed on the —— day of ——, A.D. ——, and intituled (*reciting the title of the by-law*); and I adjudge the said A.B. for his offence to forfeit and pay the sum of ——, to be paid and applied according to law; and also to pay to C.D., the complainant, the sum of —— for his costs in this behalf. And if the said several sums be not paid forthwith (*or* on or before the —— day of —— A.D. ——, *as the case may be*), I order that the same be levied by distress and sale of the goods and chattels of the said A.B.; and in default of sufficient distress, I adjudge the said A.B. to be imprisoned in the common gaol of the said county of —— (*or* in the public lock-up at ——), for the space of —— days, unless the said several sums and all costs and charges of conveying the said A.B. to such gaol (*or* lock-up), shall be sooner paid.

Given under my hand and seal, the day and year first above written, at ——, in the said county.

J. S., *J. P.* [L. S.]

CAUTIONS.

CAUTION TO PRISONER IN INDICTABLE OFFENCES.—After the depositions against the prisoner have been read over to him, the justice shall caution him in these or similar words:—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything, unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial." It may be as well to add, "And I give you clearly to understand, that you have nothing to hope from any promise of favor, and nothing to fear from any threat which may have been held out to you, to induce you to make any admission or confession of your guilt; but that whatever you shall now say, may be given in evidence against you, notwithstanding such promise or threat."

And whatever the prisoner then says in answer thereto shall be taken down in writing, and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of witnesses, and be transmitted with them as hereinafter mentioned.

As to the caution to juvenile offenders, see article "Juvenile Offenders," *post.*

CHALLENGE TO FIGHT.

It is a very high offence to challenge another, by word or letter, to fight a duel, or to be the messenger of such challenge, or even barely to provoke another to send such challenge to fight, as by dispersing letters to that purpose containing reflections and insinuating a desire to fight. Thus, a letter to the following effect was held indictable:—"You have behaved to me like a blackguard. I shall expect to hear from you on this subject, and will attend to any appointment you may think proper to make." No provocation, however great, justifies the defendant. In a case of this kind the prosecutor must prove—1st. The letter or words conveying the challenge; and 2nd. Where it does not appear from the writing or words themselves, he must prove the intent of the party to challenge, or to pro

voke a challenge. In the latter case, the prosecutor must shew the circumstances under which the words were uttered, for the purpose of proving the unlawful intent of the defendant. Thus, words of provocation, as "liar," or "knave," though a *mediate* provocation to a breach of the peace, do not tend to it *immediately*, like a challenge to fight, or threat to beat another. Yet these, or any other words, would be indictable if proved to have been spoken with an intent to urge the party to send a challenge. (Roscoe's Crim. Evid. p. 352).

CHEATING.

False Pretences.—"If any person, by any false pretence, obtains from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, such offender shall be guilty of a misdemeanor, and shall be imprisoned in the Penitentiary for any term not exceeding fourteen years, nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or shall suffer such other punishment, by fine or imprisonment, or by both, as the court may award." (Con. Stat. C., c. 92, s. 71).

"If any person, by any false pretence, obtains the signature of any other person to any bill of exchange, promissory note or any valuable security, with intent to cheat or defraud, every such offender shall be guilty of a misdemeanor, and shall be liable to fine or imprisonment, or both, at the discretion of the court; such imprisonment to be for a period less than two years." (*Ib.* s. 72.)

"If any person obtains any property whatever, with intent to defraud, such offender shall be guilty of a misdemeanor, and shall be imprisoned for any period not exceeding two years, with or without hard labor." (*Ib.* s. 73.)

"If any person, by means of any false ticket or order, or of any other ticket or order, fraudulently and wilfully obtains, or attempts to obtain, any passage on any railway, or in any steam or other vessel, such offender shall be guilty of a misdemeanor,

and shall be liable to imprisonment in any common gaol or prison, with or without hard labor, for any period not exceeding six months." (*Ib.* s. 74.)

"In any indictment for obtaining or attempting to obtain any property by false pretences, with intent to defraud, it shall be sufficient to state that the property was obtained, or attempted to be obtained, by the defendant by false pretences, with intent to defraud, without any further or more particular statement of such false pretences." (*Ib.* c. 99, s. 35.)

PERSONS INDICTED FOR LARCENY MAY BE FOUND GUILTY OF OBTAINING UNDER FALSE PRETENCES.—"If upon the trial of any person for larceny it appears that the property taken was obtained by such person by fraud, under circumstances which do not amount to such taking as constitutes larceny, such person shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict that such person is not guilty of larceny, but is guilty of obtaining such property under false pretences, with the intent to defraud, if the evidence prove such to have been the case, and thereupon such person shall be punished in the same manner as if he had been convicted upon an indictment for obtaining property under false pretences; and no person so tried for larceny as aforesaid shall be afterwards prosecuted for obtaining property by false pretences upon the same facts." (*Ib.* s. 61.)

ON AN INDICTMENT FOR OBTAINING MONEY, &C., BY FALSE PRETENCES, IF A LARCENY BE PROVED, THE PARTY MAY BE CONVICTED OF LARCENY.—"If upon the trial of any person indicted for obtaining any chattel, money, or valuable security by any false pretence, with intent to cheat or defraud any person of the same, it be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no such indictment shall be removeable by *certiorari;* and no person tried for such misdemeanor shall be afterwards prosecuted for larceny upon the same facts." (*Ib.* s. 62.)

"In case of the conviction of any person for cheating or fraud, the person convicted of any such offence may be sentenced to be imprisoned only, or imprisoned and kept at hard labor, or in solitary confinement, in the common gaol or house of correction, for any period less than two years, or may be imprisoned at hard labor in the Penitentiary for any term not less than two and not exceeding seven years." (Con. Stat. U. C. c. 115, s. 1.)

This branch of the law is involved in some obscurity. The decisions of the superior courts as to the extent of its application, and the offences which come within the reach of the criminal law, or are merely the subject of civil redress, are perplexing, if not contradictory, and are, as observed by Creswell, J., well calculated to embarrass those who are called upon to administer the law. The difficulty arises from the nice distinction which has been drawn between a false pretence and a naked lie, not cognizable in a criminal court, and from the latitude allowed to traders, by the almost universal practice of every country, in stating or overstating the merits, or understating or concealing the faults of the commodities which are the subject matter of their dealings.

The false pretence must (as defined by Archbold) be a statement "*of some pretended existing fact*, and be made for the purpose of inducing the prosecutor to part with his property;" for instance, a promise to pay for goods on delivery is not a false pretence, but representing that another person had sent for them is. In prosecutions for obtaining money or goods by false pretences, it must be shewn that the prosecutor parted with his property *by reason* of the false pretences. Thus it was held, also, that where the prisoner represented to his master that he had done more work for him than was the fact, and was paid for the work he professed to have done, the master knowing at the time the amount of work done, an indictment under the statute could not be maintained, and the conviction was quashed. The attempt to obtain money by a false pretence is also a misdemeanor. And in another case a conviction was affirmed for attempting to obtain money from a pawnbroker, by asking him to advance money on a chain which he repre-

sented to be of silver, but which the prisoner knew to be of other metal of inferior value. It is not necessary that the false pretence should be in words; and, therefore, it has been held, that where a party gave a cheque on a banker with whom he had no account, or obtained goods and money for a forged note of hand, or assumed the gown and cap of a commoner of the University of Oxford, and obtained money or goods by means of the fraud, the offence was within the statute. The offence may also be committed by means of an innocent agent.

The law of false pretences underwent an elaborate discussion in the case of *R.* v. *Bryan*, (26 L. J. 84); and the court attempted to define where the line of commercial license and of simply lax mercantile morality ends, and that of fraudulent misrepresentation and of criminal responsibility begins. The result would appear to be that the statute must not be considered as applying to mere exaggeration or depreciation as to the quality of an article in the ordinary course of dealing during the progress of a bargain, but that it extends to cases where the *substance* of the contract is falsely represented; as, for instance, that a ring is of silver, cheese of a particular quality, or blacking of a particular person's manufacture, and the money is obtained by reason of such false pretence. The test appears to be whether the person charged falsely represented a positive fact, or said what merely amounted to an opinion.

It will be impossible to refer to all the decisions which have taken place; but we have thought it would be useful to give a brief summary of some of the principal cases, distinguishing those which have been held to be within the statute of 7 & 8 Geo. IV., c. 29, or otherwise, as the principle of these will be applicable to questions arising under the Consolidated Statutes.

Offences within the Statute.—Where a carrier falsely pretended that he had carried certain goods, and obtained money for their carriage; or a foreman pretended to his master to have paid money to the workmen which he had not paid; or a servant who had authority from his employers to pay money on their behalf falsely pretended to have paid a certain

sum, and obtained it from the clerk; or a secretary of a friendly society who obtained money from one of the members, falsely pretending that it was owing; or obtaining from the master a cheque for £14 2s. 6d., the amount appearing to be due from the master to his workmen, according to an account rendered to him by the prisoner, and all of which was due except seven shillings, which the prisoner kept; or the member of an enrolled benefit society obtaining the property of E. and others, by falsely pretending to E., the steward, who kept the money, that his wife was dead; or offering a flash note in payment under the pretence that it was a bank note; or falsely representing that the prisoner kept a shop, and that the prosecutrix might go and live with her there until she got a situation, and thereby obtaining from the prosecutrix ten shillings, advanced on the faith of such representation; or a person obtaining a charitable gift by means of a begging letter, containing a tale of fictitious distress; or obtaining money by way of a loan by means of a false pretence; or falsely pretending that the blacking sold by the prisoner was that of a particular maker, Everett's blacking; or that the horses sold by the prisoner had been the property of a deceased lady, and were then the property of her sister, and had never belonged to a horse dealer; or that the party is connected in business with a person of wealth; or fraudulently misrepresenting the weight of a load of coals delivered under a contract as 18 cwt., knowing the weight to be 14 cwt. only; or that the loaves delivered to the poor under a contract with the guardians of the parish were of full weight; or that an Irish one pound note was a five pound note; or that the prisoner had built a house on certain land, and thereby inducing the prosecutor to advance money on a deposit of the lease; or falsely pretending that the prisoner had purchased certain skins of A. B. and would sell them to the prosecutrix if she would let him have a certain sum, thereby inducing the prosecutrix to lend money to the prisoner; or passing a note of a country bank as a current note, knowing that the bank is insolvent and has stopped payment; were all held to be indictable offences under the statute.

OFFENCES NOT WITHIN THE STATUTE.—Falsely pretending that a party will pay for goods on delivery; or obtaining half a guinea's worth of silver, and stating that the half guinea would be sent presently; or falsely warranting a horse; or that the prisoner was a naval officer, and thereby inducing the prosecutor to enter into a contract to lodge and board him at a guinea per week (the supply of the articles of food being considered as too remotely the result of the false pretence); or that certain silver-plated spoons had as much silver in them as "Elkington's A.," and that the foundation was of the best material; or making a false representation as to the nature and profits of a business to induce a party to enter into partnership, the whole scheme not being a mere sham; or a servant by a false pretence inducing his master to give him a cheque as agent of a creditor of the master, with a view to its being handed over to that creditor, and the servant appropriating the cheque to his own use; were held not to be false pretences within the meaning of the statute.

CLAIM OF RIGHT.

A *bona fide* claim of right rebuts the presumption of felonious intention, though it may turn out to be groundless. But the claim must have a colour of right and not be set up against a known law, as a claim to graze on the lands of another against his will, or to plunder a wreck; for these will not be excused merely because custom has appeared to sanction such usages.

In general, however, a wrongful taking of property against the will of the owner must be considered felonious, unless shewn by circumstances to be otherwise. But the question of intent is to be gathered from circumstances, on which the jury are to decide, of which the most important is the pressure or absence of concealment at the time of and subsequent to the taking.

COCK FIGHTING.

This offence may be punished as cruelty to animals, under Con. Stat. C. c. 96 (see article "Cruelty to Animals," *post*); and

where it frequently takes place the parties may be punished for keeping a disorderly house, or a disorderly place of resort, which is an indictable nuisance. (See article "Nuisance," *post.*)

COIN—OFFENCES RELATING TO.

THE COUNTERFEITING OF CURRENT COIN.—"If any person falsely makes or counterfeits, or causes to be made or counterfeited, any coin resembling, or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or any of the gold or silver coin made or declared to be lawfully current in this Province, such person shall be guilty of a misdemeanor, and shall be imprisoned in the Provincial Penitentiary for not more than four years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years."* (Con. Stat. C. c. 90, s. 3).

"If such person afterwards offends in like manner, he shall, for such second or for any subsequent offence, be deemed guilty of felony, and shall be liable to the punishment by law provided for felony."† (*Ib.* s. 4.)

"Upon the trial of any person accused of any offence alleged to have been committed against the form of the Consolidated Statute of Canada respecting the currency, or against the provisions of this Act, no difference in the date or year marked upon the lawfully current coin described in the indictment, and the date or year marked upon the false coin counterfeited to resemble or pass for such lawfully current coin, or upon any die, plate, press, tool or instrument used, constructed,

* In cases of counterfeiting, the evidence is generally circumstantial, such as finding coining tools in the defendant's house, together with some pieces of the counterfeit money in a finished, some in an unfinished state. It is not necessary to prove that the counterfeit coin was uttered, or attempted to be uttered. If it be doubted whether the coin which the counterfeit coin was intended to imitate be the Queen's coin, it is a mere question of fact to be left to the jury on evidence of usage, reputation, &c. The words of the statute, "*apparently intended to resemble*," &c., make it unnecessary to prove that the counterfeit coin would be likely to pass for current coin, or that the coining was perfect and complete. Nor is it necessary that the spurious coin should be of the same metal it is intended to imitate.

† Two or more years' imprisonment in the Penitentiary, or less than two years' in gaol.

devised, adapted or designed, for the purpose of counterfeiting or imitating any such lawfully current coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence or accusation." (*Ib.* s. 5.)

"If any person colours or gilds, or cases over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin of coarse gold or of coarse silver, or of base metal, resembling any coin made or declared to be current in this Province, or makes or causes to be made, or buys, sells or procures for himself or for another, or knowingly brings and imports, or causes to be brought and imported into this Province, any forged, false or counterfeit gold, silver or copper coin, like to any of the gold, silver or copper coin made or declared lawfully current in Canada, or any coin of coarse gold or of coarse silver, or of base metal coloured, gilded or cased over with gold or silver, or with any wash or materials producing the colour of gold or silver, and resembling any such coin, or any piece of gilded silver resembling any such coin, or utters or attempts to utter, or tender in payment to any person or persons, as being any of the gold, silver or copper coins made or declared to be current money as aforesaid, any false or counterfeit piece counterfeited to any of the gold, silver or copper coins, so made or declared to be current, or to any of the higher or lower denominations thereof, knowing the same to be false or counterfeit, such person shall be guilty of a misdemeanor, and shall be imprisoned in the Penitentiary for not less than three nor more than fourteen years."* (*Ib.* s. 6.)

* As regards proof of the gilding, &c., or colouring, it is sufficient to prove that the counterfeit coin had partially undergone the treatment necessary to give it the appearance of current coin.

It is necessary, under the latter part of this section, to prove—1. The tendering or uttering of the coin in question, and that it is a base and counterfeit coin. Where a good shilling was given to a Jew boy for fruit, and he put it into his mouth, under pretence of trying whether it was good, and then taking a bad shilling out of his mouth instead of it, returned it to the prosecutor, saying that it was not good; this (which is called ringing the changes) was holden to be an uttering within the statute. The giving of a piece of counterfeit coin in charity is no offence, though the party know it to be a counterfeit, for there must be some intention to *defraud*. The giving of counterfeit coin to a woman, as the price of connection with her, is within the statute. It is an "uttering and putting off," as well as a "tendering," if the counterfeit coin be offered in payment, though refused by the person to whom it is offered. 2. It must be proved that the defendant knew it to be a counterfeit coin at the time he uttered it. This of

"If such person afterwards offends in like manner, he shall for such second and for any subsequent offence be deemed guilty of felony, and shall be imprisoned in the Penitentiary for life, or for any term not less than fourteen years."* (*Ib.* s. 7.)

"If any person forms, makes, cuts, sinks, stamps, engraves, repairs or mends, or assists in forming, making, cutting, sinking, stamping, engraving, repairing or mending, or has in his possession, except for some known and lawful purpose, any false or counterfeit coin, counterfeit to any coin lawfully current as aforesaid, or any die, press, tool or instrument, or metal or material of any kind, used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any coin lawfully current as aforesaid, such person shall be guilty of a misdemeanor, and shall be punished accordingly."† (*Ib.* s. 8.)

"The proof that such false or countefeit coin, or such die, press, tool or instrument, metal or material was formed, made, cut, sunk, stamped, engraved, repaired or mended by, or was in the possession of such person for some lawful purpose, shall lie upon him." (*Ib.* s. 9.)

"Any Justice of the Peace, on complaint made before him upon the oath of one credible person, that there is just cause to suspect that any person is or has been concerned in making, counterfeiting or imitating any such coin as aforesaid, shall by warrant under the hand and seal of such Justice, cause the dwelling-house, room, work-shop, out-house or other build-

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course must be done by circumstantial evidence. If for instance it be proved that he uttered or attempted to utter, either on the same day or at other times, whether before or after the uttering charged, base money, either of the same or of a different denomination, to the same or to different persons, or had other pieces of base money about him when he uttered the counterfeit money in question: this will be evidence from which a guilty knowledge may be presumed.—(Archbold's Crim. Plead. 619.)

* Under this section must be proved—1. The previous conviction, by a copy purporting to be signed and certified as a true copy by the clerk of the court or his deputy; 2. The identity of the defendant; and 3. The subsequent offence.

† It must be proved that the defendant made, &c., some such instrument, and that the instrument in question is an instrument for the unlawful purpose of counterfeiting coin, and comes within the statute. It is not necessary that the instrument should be capable of making an impression on the whole of one side of the coin.

ing, yard, garden, ground or other place, belonging to such suspected person, or where such suspected person is suspected to carry on any such making, counterfeiting or imitating, to be searched for such counterfeit coin." (*Ib.* s. 10.)

"If any such coin, or any such die, press, tool or instrument, metal or material as aforesaid, be found in the possession or custody of any person, not having the same for some lawful purpose, any other person discovering the same may seize, and he is hereby required to seize and carry the same forthwith before a Justice of the Peace having jurisdiction within the locality in which the same has been seized, and such Justice shall cause the same to be secured and produced in evidence against the person prosecuted for any such offence in any court of competent jurisdiction, and the same, after being so produced in evidence, shall by order of the court be defaced or destroyed, or otherwise disposed of as the court directs." (*Ib.* s. 11.)

"Any person to whom there is tendered in payment any pretended gold, silver or copper coin which by the stamp, impression, colour or weight thereof, affords reason to suspect the same is false or counterfeit, may cut or break such coin, and if the same be counterfeit, the person who tendered it shall bear the loss, otherwise the person who cut or broke it shall receive it for a sum proportionate to its weight; and if a question arises whether such coin be counterfeit, a Justice of the Peace shall determine the same, and if he entertains any doubt in that behalf, he may summon three skilful persons, the decision of a majority of whom shall be final." (*Ib.* s. 12.)

"If any false or counterfeit coin be produced in any court of law, the court shall order the same to be cut in pieces in open court or in the presence of a Justice of the Peace, and then delivered to or for the lawful owner thereof, if such owner claims the same." (*Ib.* s. 13.)

"Any person who knowingly utters, or attempts to utter or offers in payment, as being lawfully current, any gold coin of less than its lawful weight, or who diminishes the weight of any such coin with intent to utter or offer it in payment as lawfully current, shall be guilty of a misdemeanor, and be punished accordingly." (*Ib.* s. 14.)

"On the trial of any person for an offence under this act, it shall not be necessary to call an officer of the mint, or other person employed in producing the lawful coin, to prove any counterfeit to be such, but the fact may be proved by any evidence which is satisfactory to the jury trying the case." (*Ib.* s. 15.)

THE MAKING OR UTTERING OF SPURIOUS FOREIGN COIN.—"In case any person colors, gilds or cases over with gold or silver, or with any wash or materials producing the color of gold or silver, any coin of coarse gold or silver or of base metal, resembling any coin made, coined, or struck by or under the authority of any foreign prince or state, and then actually current in the dominions or country of such prince or state, although not current by law in this Province, or in case any person makes or causes to be made, or buys, sells or procures, or knowingly brings or imports into this Province any forged, false or counterfeit coin resembling any such foreign gold or silver coin as aforesaid, or any coin of coarse gold or silver, or base metal colored or cased over with gold or silver, or with any wash or materials producing the color of gold or silver, and resembling any such foreign gold or silver coin as aforesaid, or offers, utters, tenders, or puts off as being any such foreign gold or silver coin any forged, false, or counterfeit piece or coin couterfeited to, and resembling any such foreign gold or silver coin, knowing the same to be forged, false or counterfeit, such offender shall, for the first offence be guilty of a misdemeanor, and for the second and any subsequent offence, shall be guilty of felony."* (*Ib.* s. 16.)

"If any person forms, casts, makes, cuts, sinks, stamps or engraves, repairs or mends any die, press, mould, matrix, tool, instrument or machine, metal, or material of any kind, used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any foreign gold or silver coin

* The making and procuring dies and other materials, with intent to use them in coining Peruvian half-dollars in England, not in order to utter them there, but by way of trying whether the apparatus would answer before sending it out to Peru, to be there used in making the counterfeit coin for circulation in that country, was held to be an indictable misdemeanor at common law.

described in the last preceding section of this act, such offender shall, for the first offence, be guilty of a misdemeanor, and for the second or any subsequent offence shall be guilty of felony." (*Ib.* s. 17.)

"If any person knowingly, and except for some known and lawful purpose, has in his possession or custody, any forged, false, or counterfeited piece or coin, counterfeited to resemble any foreign gold or silver coin described in the sixteenth section of this act, or any die, press, mould, matrix, tool or instrument or machine, metal or material of any kind used, constructed, devised, adapted or designed for the purpose of imitating any foreign gold or silver coin described in the said section, such offender shall for the first offence be guilty of a misdemeanor, and for the second or any subsequent offence shall be guilty of felony."* (*Ib.* s. 18.)

"Any person convicted of having committed any misdemeanor under the three last sections of this act, shall be imprisoned in any common gaol, with or without hard labour, for any term under two years, or shall be imprisoned in the Penitentiary for any term not less than two nor more than seven years, and upon conviction for a second or any subsequent offence as aforesaid, such person shall be guilty of felony, and shall be imprisoned in the Penitentiary for any term not less than two nor more than fourteen years, in the discretion of the court before which the conviction may be had." (*Ib.* s. 19.)

SPURIOUS COPPER AND BRASS COIN.—"Except the lawful copper coin of the United Kingdom of Great Britain and Ireland, no person, body politic or corporate, shall, without authority under the hand of the Governor, import into this Province, or manufacture herein, any copper or brass coin or tokens of any description." (*Ib.* s. 20.)

"The Governor may grant such permission by and with the advice and consent of the Executive Council, and such permission shall contain the name of some certain person, body politic

* The person in whose possession any coin mentioned in the statute is found should be proceeded against, and, if necessary, remanded till sufficient time is given the constable to learn the facts as to whether or not the prisoner had offered such coin.

or corporate, authorized to import or manufacture any such coin or tokens, a description of the coin or tokens to which it extends, the quantity thereof to be imported or manufactured, and the time during which such permission shall be in force." (*Ib.* s. 21.)

"All coins imported or manufactured as aforesaid shall in purity, weight and quality, be equal to five-sixths at the least, of the lawfully current British penny or half-penny." (*Ib.* s. 23.)

"No such permission shall be granted by the Governor, for the importation or manufacture of any copper or brass coin or tokens, under the provisions of this act, by any person, body politic or corporate, unless such coin or tokens be stamped with the nominal value thereof, and with the name of such person or persons, body politic or corporate." (*Ib.* s. 24.)

"Such person, body corporate or politic, shall on demand, pay or redeem such coins and tokens at the nominal value thereof, as in payment of a debt equal to such nominal value, and shall so pay or redeem the same in lawful current coin being a legal tender in this Province." (*Ib.* s. 25.)

"All such coin or tokens as aforesaid, imported or manufactured in contravention of the twentieth and five next following sections of this act, shall be forfeited to Her Majesty, for the public uses of this Province; and the person who manufactures or imports the same, shall thereby incur a penalty not exceeding twenty dollars, for every pound troy of the weight thereof." (*Ib.* s. 26.)

"Any two or more Justices of the peace, on the oath of a credible person, that any such coin or tokens have been unlawfully manufactured or imported as aforesaid, shall cause the same to be seized and detained, and shall summon the person in whose possession the same has been found to appear before them; and if it appears to their satisfaction, on the oath of a credible witness other than the informer, that such coin or tokens have been manufactured or imported in contravention of this act, such Justices shall declare the same forfeited, and shall place them in safe keeping to await the disposal of the Governor, for the public uses of this Province." (*Ib.* s. 27.)

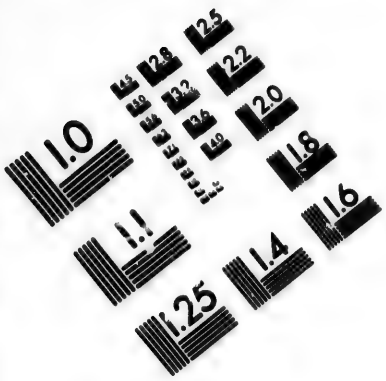
"If it in like manner appears to the satisfaction of such Justices, that the person in whose possession such coin or tokens were found knew the same to have been so illegally manufactured or imported, they may condemn the offender to pay the penalty aforesaid with costs, and may commit him to the common gaol of the district, county or place for a period not exceeding two months, if such penalty and costs are not forthwith paid, or until the same be paid." (*Ib.* s. 28.)

"If it appears to the satisfaction of such Justices of the Peace, that the person in whose possession such coins or tokens were found was not aware of their having been so illegally manufactured or imported, the penalty may, on the oath of any one credible witness other than the plaintiff, be recovered from the owner thereof, by any person who sues for the same in any court of competent jurisdiction." (*Ib.* s. 29.)

"Any officer of Her Majesty's customs may seize any coin or tokens, imported or attempted to be imported into this province in contravention of this act, and may detain the same as forfeited, to await the disposal of the Governor, for the public uses of the province. (*Ib.* s. 30.)

"No person shall utter, tender or offer in payment any copper or brass coin, other than the lawful coin of the United Kingdom, or the tokens of some one of the chartered banks of this Province, or of the *Banque du Peuple* at the City of Montreal, imported or manufactured before the twenty-first day of November, one thousand eight hundred and forty-one, under the sanction and authority of the Executive, or under and by virtue of the ordinances of the late Province of Lower Canada heretofore repealed, or American cents, or such coins or tokens as have been lawfully imported into, or manufactured in this Province, according to the provisions of the Act 4, 5 Vic. c. 17. or of the act respecting the currency, or of this act, under a penalty of the forfeiture of double the nominal value thereof." (*Ib.* s. 31.)

"Such penalty may be recovered, with costs, in a summary manner, on the oath of one credible witness other than the informer, before any justice of the peace, who, if such penalty and costs be not forthwith paid, may commit the



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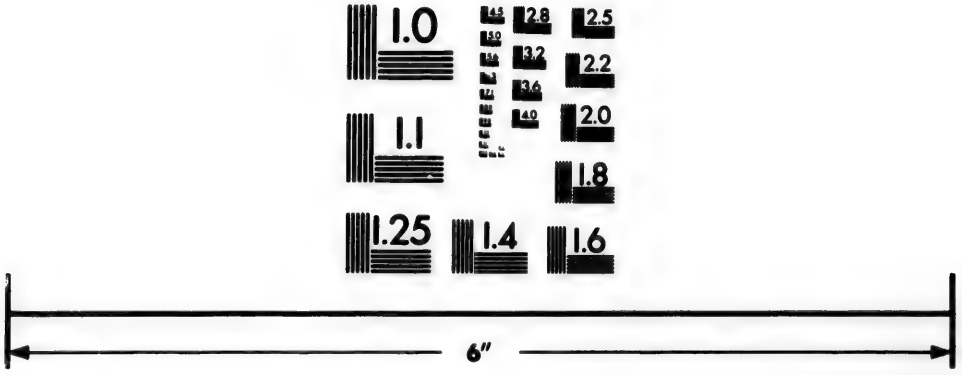

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offender to the common gaol of the district, county or place, for a time not exceeding eight days, or until the same be paid, if sooner paid." (*Ib.* s. 32.)

"One moiety of all the penalties imposed by the twenty-sixth to the thirty-second sections of this act (but not the coins or tokens forfeited under the provisions thereof), shall go to the informer or person suing for the same, and the other moiety shall belong to Her Majesty, for the public uses of this Province." (*Ib.* s. 33.)

COMMITMENT.

A commitment may be absolute, or only for safe custody. It is absolute when, in default of distress, the penalty is imprisonment; for safe custody, when the party is committed to gaol to await his trial at the next court of competent jurisdiction.

How Commitment is made.—The commitment should be under the hand and seal of the Justice, but the Justice may give a verbal order of detainer until it is made out, or where a warrant of distress is issued, or until a return has been made to such warrant of distress. (Con. Stat. C. c. 103, s. 60; *ante*, p. 92.)

The omission of the date in a warrant of commitment was held to be fatal; but this was subsequently to a certain extent overruled, and the imprisonment held to run from the arrest under such commitment.

Defective Commitment.—If a warrant of commitment be defective or informal, it cannot be recalled, withdrawn or altered, but a valid warrant may be also lodged, which will justify the gaoler in detaining the prisoner.

Commitment for Trial.—A person charged with an indictable offence, if sent for trial, should be committed to the next court of competent criminal jurisdiction. The court should be named in the warrant, and not stated as the next court of competent jurisdiction.

Commitment in Indictable Offences.—See Con. Stat. C. c. 102, ss. 57, 58 (*ante* p. 47.)

COMPOUNDING OFFENCES.

COMPOUNDING FELONIES.—Though the bare taking again of a man's own goods which have been stolen (without favor to the thief) is no offence; yet where he either takes back the goods, or receives other amends, *on condition* of not prosecuting, this is a misdemeanor at common law, punishable by fine and imprisonment. And so, in any other felony, an agreement not to prosecute an indictment for reward is punishable as a misdemeanor; but in one case, where the defendant, after the alleged compounding, prosecuted the offender to conviction, he was acquitted.

MISPRISION OF FELONY.—This offence is somewhat similar to that of compounding felony. It is the concealment, or procuring the concealment of felony. Silently to observe the commission of a felony, without trying to apprehend the offender, is a misprision. If to the knowledge there be added assent, the party will become an accessory. The punishment for this offence is by fine and imprisonment.

CORRUPTLY TAKING REWARDS for helping to recover stolen goods, without causing the offender's apprehension, is made felony by Con. Stat. C. c. 92, s. 79, which enacts that—

"If any person corruptly takes any money or reward, directly or indirectly, under pretence or on account of helping a person to any chattel, money, valuable security, or other property whatsoever, which by any felony or misdemeanor has been stolen, obtained or converted as aforesaid, such offender shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony, and shall be imprisoned in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years."

OFFERING REWARDS UNDER PROMISE OF SECRECY.—This is made punishable by a fine of eighty dollars, to be paid to any one who may sue for it, by action of debt, to be recovered with costs of suit. (Con. Stat. C. c. 92, s. 80.)

"In default of payment, in cases not otherwise provided for, of any fine imposed under the authority of this act, on a summary conviction before any Justice of the Peace, together with the costs attending the same, within the period specified for the payment thereof at the time of conviction by the Justice before whom the conviction takes place, such Justice may issue his warrant directed to any constable to levy the amount of such fine and costs within a certain time to be in the said warrant specified; and in case of no distress sufficient to satisfy the amount being found, he may commit the offender to the common gaol of the district, county or division wherein the offence is committed for any term not exceeding one month, unless the fine and costs be sooner paid." (*Ib.* s. 81.)

COMPOUNDING, WHEN ALLOWED.—A compromise of criminal proceedings is in general permitted in those cases only in which the injured party might sue and recover damages. But by Con. Stat. C. c. 93, s. 38, in case any person be summarily convicted before a Justice of the Peace of any offence against this act, and it be a first conviction, the Justice, if he thinks fit, may discharge the offender from the conviction, upon his making satisfaction to the party aggrieved for damages and costs, or either of them, to be ascertained by the Justice.

Although parties cannot compromise without the Justice's consent, Justices have no power of compelling the complainant in summary proceedings to attend to give evidence. (See Con. Stat. C. c. 103, ss. 17, 18, *ante*, p. 77.)

CONCEALMENT OF BIRTH.*

Con. Stat. C. c. 91, s. 4, enacts that, "Any woman delivered of a child, who, by secret burying or otherwise disposing of the

* On an indictment for this offence it is necessary to prove—1. The birth; 2. The secret burial or other disposal of the body; 3. The endeavor to conceal the birth. As regards the first, the evidence of a competent physician is sufficient. As regards the secret disposal of the dead body, placing it in a drawer and keeping the key, or in a box, or under the bedding, or throwing it into the privy, is a sufficiently secret disposal of the body. But a woman who was seen carrying a bundle to the privy, which, on being opened, was found to contain the body of

dead body of the said child, endeavors to conceal the birth thereof, shall be guilty of a misdemeanor, and shall be imprisoned for any term less than two years, and it shall not be necessary to prove whether the child died before, at, or after its birth."

CONVICTION FOR CONCEALMENT ON INDICTMENT FOR MURDER.—"If any woman tried for the murder of her child, be acquitted thereof, the jury may find, if it so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the body of the said child, endeavor to conceal the birth thereof, and thereupon the court may pass sentence as if she had been convicted upon an indictment for the concealment of the birth." (Con. Stat. U. C. c. 99, s. 67.)

CONSPIRACY.

A conspiracy is an agreement between two or more persons, 1. Falsely to charge another with a crime punishable by law, either from malice towards the party, or to extort money from him; 2. Wrongfully to injure or prejudice a third person, or any body of men, in any other manner; 3. To commit any offence punishable by law; 4. To do any act to pervert the course of public justice; 5. To effect a legal purpose with corrupt intent, or by improper means; 6. To raise wages, &c.

Under the first head, a conspiracy to charge a man *falsely* with treason, felony or misdemeanor, is indictable; but it is not an indictable offence for two or more persons to consult and agree to prosecute a person who is guilty, or against whom there are reasonable grounds of suspicion.

Under the second head, a conspiracy to impose a pretended

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a child, could only be indicted for the attempt. Also, if the woman had gone to the privy for some other purpose, but while there was unexpectedly delivered, and the child fell in and was suffocated, she could not be indicted, though she concealed the birth. A woman procuring the secret burial of the child by an agent is guilty of the offence, and her agent is accessory thereto. If he be interested in the secret burial, and perform it of his own will, and without solicitation on her part, yet with her knowledge and consent, he will be principal, and she accessory. But if he do so without her knowledge or consent, though she conceal the birth, he will stand single in the offence.

article upon a purchaser; a conspiracy by a female servant and a man whom she got to personate her master and marry her, in order to defraud her master's relations of a part of his property after his death; a conspiracy to injure a man in his business; a conspiracy, by false and fraudulent representations, that a horse bought by one of the defendants from the prosecutor was unsound, to induce him to accept a less sum for the horse than the agreed price; a conspiracy to charge a man falsely as the reputed father of a bastard; a conspiracy to raise the prices of bank stock or other stocks by false rumours; a conspiracy to procure the defilement of a girl; these have respectively been held to be indictable offences.

It is necessary to prove the conspiracy, and that the defendants were engaged in it, or prove circumstances from which it may be presumed. And the prosecutor may go into general evidence of the nature of the conspiracy, before he gives evidence to connect the defendants with it. The acts and declarations also of any of the conspirators, in furtherance of the common design, may be given in evidence against all. But before evidence as to the acts of one conspirator can be received against another, it is necessary that it should be proved that the conspiracy actually existed, that the parties were members of the same conspiracy, and that the act in question was done in furtherance of the common design. The wife of one of the defendants should not be allowed to give evidence for or against the others. A conspiracy must be by two persons; one cannot be convicted of it, unless for conspiring with persons unknown or who have not appeared, or are since dead. And a man and his wife alone cannot be indicted for conspiracy.

"In case of the conviction of any prisoner for conspiracy, the person convicted of any such offence may be sentenced to be imprisoned only, or imprisoned and kept at hard labor, or in solitary confinement in the common gaol or house of correction for any period less than two years, or may be imprisoned at hard labor in the Penitentiary for any term not less than two, and not exceeding seven years." (Con. Stat. U. C. c. 115, s. 1.)

CONSTABLE.

APPOINTMENT OF ORDINARY CONSTABLES.—23 Vic. c. 8. Section 1 repeals the 10th section of cap. 17 Con. Stat. U. C.

2. "The magistrates, at the first General Quarter Sessions of the Peace to be holden in each county in Upper Canada, in the said year one thousand eight hundred and sixty-one, shall appoint [a county high constable (24 Vic. c. 48) and] a sufficient number of fit and proper persons to act as constables in each township, incorporated village, police village, and place, within their respective counties."

3. "The persons so appointed as constables shall, before entering on the duties of office, take and subscribe the following oath, which any Justice of the Peace may administer:

"I ——— having been appointed constable for the county of ——— (or United Counties, *as the case may be*), do solemnly swear, that I will truly, faithfully and impartially perform the duties appertaining to the said office, according to the best of my skill and ability. So help me God."

4. "Every such constable so appointed, and having taken the aforesaid oath, shall continue in office at least one year, and shall further continue in office from year to year without re-appointment, unless he shall claim exemption from serving as such constable, in which case he shall be released at any time after the first year, when he shall legally claim and be entitled to such exemption: Provided always, that the magistrates, at any time, in General Quarter Sessions of the Peace assembled in any county, may dismiss any person from the office of constable, and may at any time appoint such additional number of constables as they, in their discretion, may consider necessary."

APPOINTMENT OF SPECIAL CONSTABLES.—"In case it be made to appear to any two or more Justices of the Peace of any territorial division in this province, upon the oath of any credible witness, that any tumult, riot or felony, has taken place or is continuing, or may be reasonably apprehended in any territorial division or place situate within the limits for which the said respective Justices usually act, and in case such Justices be of opinion that the ordinary officers appointed for preserving

the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property in any such territorial division or place as aforesaid, then and in every such case such Justices, or any two or more justices acting for the same limits, may nominate and appoint by precept in writing, under their hands, so many as they think fit of the householders, or other persons not legally exempt from serving the office of constable, residing in the territorial division or place as aforesaid, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said Justices respectively seem necessary, for the preservation of the public peace, and for the protection of the inhabitants and the security of property in such territorial division or place." (Con. Stat. C. c. 104, s. 1.)

"The Justices of the Peace who appoint special constables by virtue of this act, or any one of them, or any other Justice of the Peace acting for the same limit, may administer to any person so appointed the following oath, that is to say:

"I, A. B., do swear that I will well and truly serve our Sovereign Lady the Queen, in the office of special constable for the ——— of ——— without favour or affection, malice or ill will; and that I will, to the best of my power, cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty's subjects; and that, while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law. So help me God." (*Ib.* s. 2.)

"In case it be deemed necessary to nominate and appoint special constables as aforesaid, notice of the nomination and appointment, and of the circumstances which rendered it expedient, shall be forthwith transmitted by the justice making such nomination and appointment, to the secretary of the province." (*Ib.* s. 3.)

"The Justices of the Peace who appoint any special constables under this act, or any two of them, or the Justices acting for the limit within which such special constables have been called out, may, at a special session of such last mentioned Justices, or the major part of such last mentioned Justices at such special session, make such orders and regulations as may from time to time be necessary and expedient for rendering such special constables more efficient for the preservation of the

public peace, and may remove any such special constable from his office for any misconduct or neglect of duty therein." (*Ib.* s. 4.)

"Every special constable appointed under this act, shall, not only within the territorial division or place for which he has been appointed, but also throughout the entire jurisdiction of the Justices who appoint him, have, exercise and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities, as any constable duly appointed has by virtue of any law or statute whatsoever." (*Ib.* s. 5.)

"Where any special constables appointed under this act are serving within any territorial division or place, and two or more Justices of the Peace of any adjoining territorial division or place make it appear to the satisfaction of any two or more Justices of the Peace, acting for the limits within which such special constables are serving, that extraordinary circumstances exist, which render it expedient that the said special constables should act in such adjoining territorial division or place, then, and in every such case, the said last mentioned Justices may, if they think fit, order all or any of the said special constables to act in such adjoining territorial division or place in such manner as to the said last mentioned Justices seem meet." (*Ib.* s. 6.)

"Every such special constable, during the time he so acts in such adjoining territorial division or place, shall have, exercise and enjoy all such powers, authorities, advantages and immunities, and be liable to the same duties and responsibilities as if he were acting within the territorial division or place for which he was originally appointed." (*Ib.* s. 7.)

"If any person being appointed a special constable as aforesaid, refuses to take the oath hereinbefore mentioned, when thereunto required by the Justices of the Peace who so appointed him, or by any two of them, or by any other two Justices of the Peace acting for the same limits, he may be convicted thereof forthwith before the said Justices so requiring him, and shall forfeit and pay such sum of money not exceeding twenty dollars, as to the convicting Justices may seem meet." (*Ib. s.* 8.)

"If any person being appointed a special constable as aforesaid, neglects or refuses to appear for the purposes of taking the said oath at the time and place for which he has been summoned, he may be convicted thereof before the justices who appointed him, or any two of them, or before any other two Justices of the Peace acting for the same limits, and shall forfeit and pay such sum of money not exceeding twenty dollars as to the convicting Justices seems meet, unless such person proves to the satisfaction of the said Justices that he was prevented by sickness or some unavoidable accident, which in the judgment of the said Justices is a sufficient excuse." (*Ib.* s. 9.)

"If any person having been appointed a special constable as aforesaid, and being called upon to serve, neglects or refuses to serve as such special constable, or to obey such lawful orders or directions as may be given to him for the performance of the duties of his office, the person so offending shall, on conviction thereof before any two Justices of the Peace, forfeit and pay for every such neglect or refusal such sum of money not exceeding twenty dollars, as to the said Justices seems meet, unless such person proves to the satisfaction of the said Justices that he was prevented by sickness or some unavoidable accident, in the judgment of the said Justices constituting a sufficient excuse." (*Ib.* s. 10.)

"The Justices who have appointed any special constables under this act, or the Justices acting for the limits within which such special constables have been called out, at a special session to be held for that purpose, or the major part of such last-mentioned Justices at such special session, may suspend or determine the service of all or any of the special constables so called out as to the said Justices respectively seems meet; and notice of such suspension or determination of the services of all or any of the said special constables shall be forthwith transmitted by such respective Justices to the secretary of the province." (*Ib.* s. 11.)

"Every such special constable shall, within one week after the expiration of his office, or after he has ceased to hold or exercise the same pursuant to this act, deliver over to his

successor, if any such has been appointed, or otherwise to such person and at such time and place as may be directed by any Justice of the Peace acting for the limits within which such special constable may have been called out, every staff, weapon and other article which has been provided for such special constable under this act; and if any such special constable omits or refuses so to do, he shall, on conviction thereof before two Justices of the Peace, forfeit and pay for such offence such sum of money not exceeding eight dollars, as to the convicting Justices seems meet." (*Ib.* s. 12.)

"If any person assaults or resists any constable appointed by virtue of this act, while in the execution of his office, or promotes or encourages any other person so to do, every such person shall, for such offence, on conviction thereof before two Justices of the Peace, forfeit and pay any sum not exceeding forty dollars, or shall be liable to such other punishment upon conviction on an indictment or information for such offence, as persons are by law liable to for assaulting a constable in the execution of the duties of his office." (*Ib.* s. 13.)

"The Justices of the Peace acting for the limits within which such special constables have been called out to serve, may, at a special session to be held for that purpose, or the major part of the Justices at such special session, from time to time order such reasonable allowances for their trouble, loss of time and expenses, not exceeding one dollar per diem, to be paid such special constables who have so served, or are then serving, as to such Justices, or to such major part of them, seem proper."* (*Ib.* s. 14.)

APPOINTMENT OF CONSTABLES IN UNORGANIZED TRACTS.—"The laws now in force with respect to the holding of courts of Quarter Sessions of the Peace, County Courts, and Division Courts, in the several counties in Upper Canada, and to the composition, power and jurisdiction of such courts respectively, and to the appointment, powers, duties and emoluments of sheriffs, coroners, clerks, constables, and all other officers

* It is to be noticed that, generally, convictions under this act must be made by two justices.

attached to such courts, or employed in the administration of justice in connection therewith, shall extend and apply to such provisional judicial districts, and such districts shall be deemed and held to be counties for all and every the purposes of such laws." (Con. Stat. U. C. c. 128, s. 96.)

HIGH CONSTABLE.—Whatever might have been the ancient importance of this officer, his duties are now in all respects similar to the county constables, except that he is expected to attend the sessions, assizes, &c., to maintain order, for which he generally receives an annual salary from the Quarter Sessions. Any duties he may perform in obeying warrants and serving summonses he is paid for as any other constable.

OFFICE OF CONSTABLE.—The office of a constable is *ministerial*, as obeying warrants and precepts of justices, coroners and sheriffs, and the charges of private individuals. In some cases its duties are defined by particular acts of parliament. At the same time the constable is a conservator of the peace at common law.

DUTIES OF CONSTABLES.—As regards the duties of constables, see Con. Stat. C. c. 102, ss. 13, 14, 21, 25, 50, 51 (*ante*, pp. 32, 34, 35, 44, 45), and c. 103, ss. 2, 3, 58, 62, 68 (*ante* pp. 70, 91, 93, 96.)

If the person served with a summons does not attend, the constable must make it appear, by oath or affirmation, to the justice or justices, that such summons was duly served. On receipt of a warrant, the constable must apprehend the party against whom it is issued, and bring him before some Justice or Justices of the Peace for the same county or united counties.

HOW ARREST IS MADE.—In executing a warrant, the arrest is to be made by laying hold of, or at least securing the person of the party; without this it is not a legal arrest.

CONSTABLES' ACCOUNTS.—All accounts or demands preferred by any constable against the county, connected with matters in which justices have *summary jurisdiction*, should be delivered to the clerk of the peace on or before the first day of the

session in each term, to be laid before the bench. The court auditing such accounts must sit on the second day of the session, and consist of not less than *seven* justices. (Con. Stat. U. C. c. 121, ss. 1, 2 and 3.) The accounts of constables in connexion with *criminal cases* should be made out in duplicate, and left with the county treasurer to be examined and audited by the government board of auditors.

As to the arrest of offenders caught in the act, &c., see article "Arrest" (*ante* p. 139.)

SEARCHING AND HANDCUFFING PRISONER.—In the performance of this duty much discretion is required, and the constable's justification for resorting to such precautionary measures must depend on the peculiar circumstances of each case. The mere fact of a person being drunk and disorderly will not justify a constable in searching his person; but the person arrested, whatever the nature of the charge, may conduct himself so violently that it may be prudent and right to search him, as well for his own protection as for that of those entrusted with the duty. The same rule applies to handcuffing a person in custody, and the right must depend on the circumstances of each particular case; as, for instance, the nature of the charge and the conduct and temper of the person in custody.

In the case of *Bessell* v. *Wilson*, Lord Campbell made the following observations on this subject: "If a person were taken into custody for the commission of a felony, it would be the magistrate's duty to direct a search to see if there were any instruments in his possession, with which he might have been engaged in the violation of the law. He (Lord Campbell) had received a communication from Mr. Mayne, the commissioner of the police, apprizing him that a notion had got abroad that to search a person taken in custody was illegal, and that magistrates and police officers had refused, in consequence, to subject persons taken in the commission of felony to search. Now no such doctrine was laid down by him (Lord C.), and he would take this opportunity of stating that it might, on the contrary, be often highly salutary that persons so apprehended

should be searched; but in a case wherein a tradesman was summoned before an alderman, and had appeared by his attorney and counsel, and wherein the warrant in question was issued against him merely because he did not appear in person, to search his person, the manner in which the plaintiff was searched was contrary to law. The pretence urged in excuse for such a proceeding, that the object was to prevent the plaintiff from committing suicide, or making an attack upon or possibly murdering the alderman, was most absurd; and he hoped that proper distinction would be made between such persons, and parties taken into custody for the commission of felony."

Costs.—A constable should be very particular in making up his costs correctly, and strictly in accordance with the law; any overcharge renders him liable to the penalty of forty dollars. (Con. Stat. U. C., c. 119, s. 8.) If two or more cases are heard at the same time, he is entitled to only one dollar for the whole of his attendance on that day, he must therefore divide this attendance fee equally among the parties; if there are two cases he will charge fifty cents in each case; if four cases, twenty-five cents in each case. In the service of summonses, he is entitled only to his mileage for every mile necessarily travelled from the magistrate's office till the last summons has been served, and not the mileage upon each summons separately from the magistrate's office. These are two of the rules most commonly misunderstood. In taking a prisoner to gaol, he is bound to travel by the cheapest route, and will not be allowed the expense of a waggon if he can travel by the railroad.

Practical directions to Constables.—The following instructions have been promulgated in England for the guidance of constables, and with a few exceptions are applicable to county constables in this province; with the understanding that any arrest being made, the party so arrested must *forthwith* be taken before some neighbouring Justice of the Peace. The county constable should never forget, that in the execution of the duties of his office the utmost forbearance and patience

are required, combined with unwavering firmness and fidelity. He should never act hastily, but should any circumstance occur of a suspicious character, wait patiently till something should be done which would give him a right to interfere, or at all events a reasonable excuse for so doing.

CRIMINAL DUTIES OF CONSTABLES, AND EXECUTION THEREOF.—The constable may arrest any one whom he has just cause to suspect to be about to commit a felony. Thus when a drunken person, or a man in a violent passion, threatens the life of another, the constable should interfere and arrest.

He should arrest any person having in his possession any pick-lock-key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or out-building; or any person armed with any gun, pistol, hanger, cutlass, bludgeon, or offensive weapon, or having upon him any instrument with intent to commit any felonious act.

Every person found in any dwelling-house, warehouse, coach-house, out-house, or stable, or in any enclosed yard, garden, or area, and being there for any unlawful purpose, may be arrested.

In each of these cases, the constable must judge from the situation and behaviour of the party what his intention is. In some cases no doubt can exist; as when the party is a notorious thief, or acting with those who are thieves, or when the party is seen to try people's pockets in a crowd, or to attempt to break into a house, or to endeavour to take any property secretly from another. The constable should not act hastily, in case the intention is not clear, but content himself with watching closely the suspected party, that he may discover his design.

The constable must arrest any one whom he sees in the act of committing a felony,* or any one whom another positively

* The principal felonies are murder and attempts to murder or maim; manslaughter; rape; robbery and attempts to rob; burglary; house-breaking; cattle, horse and sheep stealing; stealing from the dwelling-house, the person, and theft generally; receiving stolen goods; embezzlement, &c.; also setting fire to any house, out-building, stacks or crops; and all cases of forging and coining. The minor offences are called misdemeanors: such as frauds, uttering counterfeit coin, riots, assaults, affrays, &c.

charges with having committed a felony, or whom another suspects of having committed a felony, if the suspicion appear to the constable to be well founded, and providing the person so suspecting go with the constable.

Though no charge be made, yet if the constable suspect a person to have committed a felony, he should arrest him; and if he has reasonable grounds for his suspicion, he will be justified, even though it should afterwards appear that no felony was in fact committed; but the constable must be cautious in thus acting upon his own suspicions.

Generally, if the arrest was made discreetly and fairly in pursuit of an offender, and not from any private malice or illwill, the constable need not doubt that the law will protect him.

If, after sunset and before sunrise, the constable shall see any one carrying a bundle or goods which he suspects were stolen, he should stop and examine the person and detain him; but here also he should judge from circumstances (such as the appearance and manner of the party, his account of himself, and the like) whether he has really got stolen goods, before he actually takes him into custody.

The constable must make every exertion to effect the arrest; and the law gives him abundant power for the purpose. If the felon or person accused of felony fly, he may be immediately followed wherever he goes; and if he takes refuge in a house, the constable may break open the doors, if necessary, to get in, first stating who he is and his business; but the breaking open of outer doors is so dangerous a proceeding, that the constable should never resort to it except in extreme cases, and when an immediate arrest is necessary.

There are some cases in which a constable may and ought to break into a house, although no felony has been committed, when the necessity of the case will not admit of delay, as when persons are fighting furiously in a house, or when a house has been entered by others with a felonious intent, and a felony will probably be committed unless the constable interfere, and there are no other means of entering; except that in such cases it is better in general that the constable should wait till he has a warrant from a magistrate for the purpose.

If a prisoner should escape, he may be re-taken, and in immediate pursuit the constable may follow him into any place or any house. If a constable finds his exertions insufficient to effect the arrest, he ought to require all persons present to assist him, and they are bound to do so.

In cases of actual breaches of the peace, as riots, affrays, assaults and the like, committed within view of the constable, he should immediately interfere (first giving public notice of his office, if he be not already known), separate the combatants, and prevent others from joining in the affray. If the riot, &c., be of a serious nature, or if the offenders do not immediately desist, he should take them into custody, securing also the principal instigators of the tumult, and doing every thing in his power to restore quiet.

A constable, in cases of assault which have not been committed in his presence, or within his view, is not authorized to arrest or assist in arresting the party charged, nor is he to receive a person so charged into his custody, unless the party has been arrested by some other constable who saw the assault committed.

He may arrest any one assaulting or opposing him in the execution of his duty.

If a person forcibly enter the house of another, the constable may, at the request of the owner, turn him out directly; if he have entered peaceably, but without right to enter, and the owner request the constable to turn him out, the constable should first request him to go out, and if he does not do so, he should turn him out, in either case using no more force than is necessary for the purpose.

When the offence has not yet been committed, but when a breach of the peace is likely to take place, as when persons are openly preparing to fight, the constable should take the parties concerned into custody; if they fly into a house, or are making preparations to fight within the house, the constable should enter the house to prevent them, and likewise take the parties into custody; and should the doors be closed, he may break them open, if admission be refused, after giving notice of his office and his object in entering.

If a party threaten another with immediate personal violence, or offer to strike him, the constable should interfere and prevent a breach of the peace; if one draw a weapon upon another, attempting to strike him, the constable should take him into custody. If persons be merely quarrelling or insulting each other by words, the constable has no right to take them into custody, but should be ready to prevent a breach of the peace.

The constable ought to arrest and take before a Justice any person walking about the streets, and exposing to view in the street any obscene print or exhibition.

After arrest, the constable is in all cases to treat a prisoner properly, and impose only such constraint upon him as may be necessary for his safe custody.

The constable is bound to follow the directions contained in a warrant, and to execute it with secrecy and despatch; the power given to him for the purpose of arresting has been already shown. If the warrant cannot be executed immediately, it should be executed as soon as possible.

The constable must execute the warrant himself, or, when he calls in assistance, must be actually present. Upon all occasions he ought to state his authority, if it be not generally known, and should show his warrant when required to do so; but he should never part with the possession of the warrant, as it may be wanted afterwards, for his own justification.

Upon the arrest being made, the prisoner is to be taken before a magistrate as soon as convenient. When the prisoner is brought to the Justice, he still remains in custody of the constable until his discharge or committal, or until the officer receives the orders of the Justice.

The constable may enter a house to search for stolen goods, having first got a search warrant from a magistrate for that purpose. He should, when it is possible so to do, execute it in the day time. If he find the goods mentioned, he is to take them to a magistrate; and, when the warrant so directs, he must take the person also in whose possession they are found. To avoid mistakes, the person who applies for the warrant ought to attend at the search, to identify the goods.

The constable has power to apprehend and carry before a Justice of the Peace every common prostitute wandering in the public streets, public highways, or places of public resort, behaving in a disorderly or indecent manner; every person wandering abroad and lodging in any barn or out-house, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself; every person playing or betting in any street, road, highway, or other open or public place, at or with any table or instrument of gaming, at any game or pretended game of chance.

REFUSING TO ASSIST A CONSTABLE.—Every person present is bound to assist, when charged by the constable to do so; and refusal is an indictable misdemeanor, punishable by fine or imprisonment, but for which no summary remedy has been provided. To support an indictment for refusing to aid in quelling a riot, it was held that it was necessary to prove—*first*, that the constable saw a breach of the peace committed; *secondly*, that there was a reasonable necessity for calling on the defendant for his assistance; and, *thirdly*, that the defendant refused, without any physical impossibility or lawful reason.

CONTEMPT.

CONTEMPT OF JUSTICE.—Pollock, now Chief Baron, and Follett, when law officers of the Crown, advised that Justices have no power to commit for contempt, and that the proper course is to indict the offender, a proceeding which in England, it is understood, would be originated by the Secretary of State, on the circumstances appearing to justify such a measure. After this opinion it would be unwise for any Justice, relying on the old cases, or on text books, to exercise a power which is questioned by such high legal authority. But by Con. Stat. C. c. 103, s. 19 (p. 77, *ante*); Con. Stat. C. c. 102, s. 29 (p. 37, *ante*), a witness refusing to answer such questions concerning the

matter in question that may be put to him by a Justice, may, by such Justice, be committed to gaol for any period not exceeding ten days, unless in the meantime he consent to be examined and to answer concerning the premises.

CONVICTION.

The power of a Justice of the Peace to convict an offender in a summary way, without trial by jury, is in restraint of the common law, and in abundance of instances a tacit repeal of that famous clause in the Great Charter that a man shall be tried by his equals, which was also the common law of the land long before the Great Charter. Therefore, generally, nothing will be presumed in favour of this branch of the office of a Justice of the Peace, but the intendment will be against it. For which reason, where this special power is given to a Justice of the Peace by act of parliament, it must appear that he has strictly pursued it, otherwise the common law will break in upon him, and level all his proceedings.

The term "conviction" has two meanings: commonly speaking, it is taken to mean the verdict at the time of trial, though in strict legal sense it is used to denote the judgment of the court.

What a Summary Conviction is.—A summary conviction is a record of the proceedings had, under the authority of a penal statute, before some Justice duly authorised to receive information and proceed to judgment.

The framing of convictions requires great attention, for they are construed even more strictly than indictments, because the jurisdiction exercised is summary; accordingly no one subject relating to a magistrate's duty requires more care.

The authority to convict being special, and in restraint of the common law, must appear on the face of the proceedings to have been strictly pursued according to the letter of the act by which it was created, so as to shew the most material point, namely, *that the justice has jurisdiction in the case;* for those

who act under a jurisdiction given by act of parliament must shew that jurisdiction; since in a matter of jurisdiction the court will intend nothing. It must also appear in like manner, that rules similar to those adopted by the common law in criminal prosecutions, and founded in natural justice, have been observed; unless the statute should expressly dispense with the necessity of so stating them. Indeed it is reasonable that summary convictions should be construed with strictness; because, if regular on the face of them, and unappealed against by the defendant, they are taken to be true in fact against him, and exclude him from ever bringing an action for malicious prosecution unless when questioned by him on appeal. "Convictions," said Lord Holt, "ought to be certain, and not taken upon collection," for they are in the nature of a verdict and judgment. An adjudication in a conviction is entire; one point cannot be given at one time, and another at a subsequent period. Nor can it be split, so that it is not good throughout; it cannot be severed so as to be bad in a material part and good as to the rest, even though the several parts are in their nature distinct.

A commitment, reciting a conviction, which fails to set forth an offence over which the committing Justice had jurisdiction, is bad, and the defendant will be discharged on a writ of *habeas corpus;* but this has been much simplified by recent legislation.

The formal conviction in England formerly set forth the following particulars:

1st. An information or charge against the defendant;

2nd. A summons or notice of such information, in order that he may make his defence;

3rd. His appearance or non-appearance;

4th. His confession or defence;

5th. The evidence against him, in the event that he do not confess; and

6th. The judgment or adjudication.

Fortunately for the Canadian Justice of the Peace, the framing of the formal conviction, although requiring great care, is a much simpler matter. The form of conviction will be found at p. 109, *ante.*

How Offence to be described.—The offence of which the party is convicted should be described in the conviction clearly and definitely, without duplicity or uncertainty; and where the statute creating the offence uses the terms "unlawfully and maliciously," "wilfully," "maliciously," or any other equivalent expressions, they should also be used in the conviction. Where synonyms are used in the conviction, they should be used conjunctively, and not disjunctively. The rule laid down in *Paley on Convictions* is, that all circumstances of exemption and modification, whether applying to the offence or the person, that are either originally introduced or incorporated by reference to the enacting clause, must be distinctly enumerated and negatived; but that such matters of excuse as are given by other distinct clauses or provisos need not be specifically set out or negatived; and it is immaterial whether the exceptions be in another act of parliament, if distinctly referred to and engrafted into the enacting clause. The conviction should specify the value, number, or quality of the articles which are the subject matter of the prosecution, or the amount of the injury done, where the same is the measure of the punishment to be awarded by the justice, or where a certain value or amount is essential to give jurisdiction, or to constitute the offence.

Whenever it is immaterial by what means the prohibited act has been effected, it will be sufficient, in describing the offence to use the words of the statute; but where the particular means used to effect the object are essential to the description of the offence, they should be set out distinctly in the conviction. Thus, under an act making it penal by any pretence, device, or description whatever, to promise any sum in any event relating to the drawing of a lottery ticket, it was held that the particular pretence must be set out. In like manner in a conviction against a servant for neglect of his master's service, or a master for misusage of his servant, the particular neglect or misusage should be described. But when a particular act constitutes the offence, it is enough to describe it in the words of the legislature. Thus, in the late case of *R.* v. *Grant*, in which a conviction for "playing on a certain highway, to wit, the River Thames, with certain instruments of gaining, to wit,

cards," was held to be sufficient. Lord Campbell observed, "the general rule now is, that if you follow the words of the act, the conviction is right." And Mr. Justice Crompton, in same case, asked, "why should not the words in the conviction have the same sense as in the act of parliament?" So also Mr. Justice Hill observed, "that generally speaking it is sufficient if the conviction follow the words of the statute." The conviction need not recite or give the title of the statute creating the offence, but should conclude with the words "contrary to" or "against the form of the statute in such case made and provided," if the offender be proceeded against under a statute.

Conviction under a By-law.—Heretofore it was held in all convictions under by-laws, that the particular by-law under which the conviction was made should be embodied in the conviction, but by 27 Vic., c. 18, this was amended as far as relates to Upper Canada. (See article "By-law," *ante*.)

Amendment of Conviction.—At the General Quarter Sessions of York and Peel, March, 1864, it was ruled that a magistrate has a right to amend his conviction or return a new one to the office of the Clerk of the Peace at any time before the case is in court; and the case is not before the court until the notice of appeal is proved.

In summary convictions, where the evidence is equally balanced, or where there is any *doubt* in the mind of the Justice, the defendant is entitled to the benefit of such doubt, and ought to be acquitted, or the complaint dismissed.

Death of Justice.—If the Justice granting a warrant of commitment in execution die before it be executed, the execution having been delayed by the defendant's having absconded, or any other cause, it is doubtful whether the warrant of the deceased Justice can be safely executed. It is conceived that a warrant of apprehension and not of commitment may be acted upon, notwithstanding the death of the Justice that granted it.

Death of the Informer.—In case of the death of the informer in summary convictions before the hearing, the infor-

mation is at an end, and cannot be proceeded with by the personal representatives. There is no one before the court against whom the Justice could issue a warrant of distress for costs, if the defendant should be acquitted; nor has the Justice any power, it is apprehended, to enquire who are the representatives, or to award the penalty payable to an informer to his executors or administrators.

COSTS.

The amount of costs must be specified in the conviction or order. It is not usual in summary proceedings to allow the fee of an attorney, but there seems to be no legal objection against doing so, unless such fee be considered inconsistent with the fees established by law, to be taken on proceedings had by and before Justices of the Peace. (Con. Stat. C. c. 103, s. 53, see p. 90, *ante*.) Unless there be a conviction or order the defendant cannot be ordered to pay costs to the complainant. In trivial cases it is not however unusual for the Justices to allow the information to be withdrawn, on the defendant consenting to pay expenses. In such a case it is better for the defendant to pay the complainant the costs as far as incurred, and for the complainant to be permitted to withdraw the complaint, paying the costs. This course relieves the Justice of all liability to annoyance. In case of a first conviction under Con. Stat. C. c. 93, s. 38, (see article "Malicious Mischief," *post*,) the Justice is empowered by that act to discharge the offender on his making satisfaction to the party aggrieved for damages and costs, or either of them, as ascertained by the Justice.

It is not a fatal defect in a conviction that it does not award costs, though the act expressly mentions costs.

Costs when case is dismissed.—In cases of summary jurisdiction where the complainant fails to sustain his charge, and the case is dismissed by the Justice, the complainant must pay all costs if so ordered; and he may, in default of distress, be committed by the Justice for any period not exceeding one month. The defendant cannot be charged with costs except in

cases of conviction. A Justice therefore cannot dismiss a charge, and require the accused to pay the costs.

FEES RECEIVABLE BY JUSTICES OF THE PEACE OR BY THEIR CLERKS.—Con. Stat. U. C. c. 119, ss. 11-15. "The following fees, and no others, shall be taken by Justices of the Peace in Upper Canada, or by their clerks, for the duties and services hereinafter mentioned, that is to say:

"For an information and warrant for apprehension, or for an information and summons for assault, trespass, or other misdemeanor, *fifty cents;*

"For each copy of summons to be served on defendant, or defendants, *ten cents;*

"For a *subpœna*, *ten cents*, only one on each side being charged for in each case, and which may contain any number of names; and if the Justice of the case requires it, additional *subpœnas* shall be issued without charge;

"For every recognizance, *twenty-five cents*, only one to be charged in each case;

"For every certificate of recognizance under the act respecting estreats, *twenty-five cents;*

"For information and warrant for surety of the peace for good behaviour, to be paid by complainant, *fifty cents;*

"For warrant of commitment for default of surety to keep peace or good behaviour, to be paid by complainant, *fifty cents.*"

FEES IN CASES NOT EXPRESSLY PROVIDED.—12. "The costs to be charged in all cases of convictions, where the fees are not expressly prescribed by any statute, shall be as follows, that is to say:

"For information and warrant for apprehension, or for information and summons for service, *fifty cents;*

"For every copy of summons to be served upon defendant or defendants, *ten cents;*

"For every *subpœna* to witness (as provided in the eleventh section of this act,) *ten cents;*

"For hearing and determining the case, *fifty cents;*

"For warrant to levy penalty, *twenty-five cents;*

"For making up every record of conviction when the same is ordered to be returned to the sessions, or on *certiorari*, *one dollar*;

"For copy of any other paper connected with any trial, and the minutes of the same if demanded—every folio of one hundred words, *ten cents*."

As to Summary Proceedings.—13. "But in all cases which admit of a summary proceeding before a Justice of the Peace, and wherein no higher penalty than twenty dollars can be imposed, the sum *fifty cents* only shall be charged for the conviction, and *twenty-five cents* for the warrant to levy the penalty."

Fees to Witnesses.—"And in all cases where persons are *subpœnaed* to give evidence before Justices of the Peace, in cases of assault, trespass, or misdemeanor, the witness shall be entitled, in the discretion of the magistrate, to receive at the rate of *fifty cents* for every *day's* attendance where the distance travelled in coming to and returning from such adjudication does not exceed ten miles, and *five cents* for each mile above ten.

Bill of Costs—14. "Every bill of costs shall, when demanded, be made out in detail, and when so made, *ten cents*."

Fees not allowed to Justices in cases above misdemeanors nor to Witnesses, except by order of the Court.—15. "This act shall not authorize any claim being made by the Justices aforesaid, for fees of any description connected with cases above the degree of misdemeanor; nor shall witnesses in cases above such degree be allowed anything for their attendance or travel, except under the order of the court before which the trial of the case is had."

Costs in Articles of the Peace.—In cases where articles of the peace are exhibited against a person, requiring him or her to give sureties for the peace and good behaviour, the accused may be arrested as already mentioned, and held to bail without any evidence being adduced in proof of the charge. In these cases the statute (Con. Stat. U. C., c. 119, s. 11), requires the

complainant to pay the costs of the information and warrant, and the warrant of commitment in default of sureties, each *fifty cents*. It is presumed the accused would have to pay for the recognizance to keep the peace; at least such is the general practice.

COSTS OF JUSTICE WHERE COMPLAINT IS DISMISSED.—These and all other costs are to be paid by complainant. Information and summons *fifty cents*, copy of summons *ten cents*, hearing *fifty cents*, if one witness or more for the complainant *ten cents*, if one witness or more for defendant *ten cents*. Where no conviction or order is made, none can be charged for. The fees of a Justice where a conviction is made, and where no higher penalty than twenty dollars can be imposed, are—information *and* summons, or information *and* warrant, *fifty cents;* copy of summons, *ten cents;* hearing and determining the case, *fifty cents;* conviction, *fifty cents; ten cents* in addition for *subpœna* for witness or witnesses for plaintiff,—the same for *subpœna* to defendant's witness or witnesses; *fifty cents* in addition for the record of conviction, where a higher penalty than twenty dollars *can* be imposed.

CONSTABLES' COSTS.—See under article "Constable."

The constable is entitled to twenty five cents for the service of *each* summons, *one dollar* for arresting under a warrant, *ten cents* for each mile necessarily travelled to serve summons or warrant; attending Justice on trial, for each day necessarily employed, *one dollar;* levying upon distress warrant and returning the same, *one dollar*.

CRUELTY TO ANIMALS.

"If any person wantonly, cruelly, or unnecessarily beats, binds, ill-treats, abuses or tortures any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, pig or other cattle, or any poultry, or any dog, or domestic animal or bird; or if any person driving any cattle or other animal is, by negligence or ill-usage in the driving thereof, the means whereby

any mischief, damage or injury is done to any such cattle or other animal; every such offender, being convicted of any or either of the said offences before any one Justice of the Peace for the city, town, district or county in which the offence has been committed, shall, for every such offence, forfeit and pay (over and above the amount of the damage or injury, if any, done thereby, which damage or injury shall and may be ascertained and determined by such Justice), such a sum of money not exceeding ten dollars, nor less than one dollar with costs, as to such justice seems meet." (Con. Stat. C. c. 96, s. 1.)

BINDING SHEEP.—Binding sheep, &c., while conveying them to market for a distance of under fifteen miles is no offence; but the animals are not to remain bound for more than half an hour after arriving at the market. (See *Ib.* s. 4.)

ARREST.—Any constable, or the owner of the animals, may, on seeing them ill-treated, or on information thereof from some third party, (who must leave his or their name and residence with the constable,) seize the offender without warrant or authority, except the authority by this act conferred, and convey him to some Justice under whose jurisdiction the offence was committed, and the Justice shall forthwith proceed to examine the case. (See *Ib.* s. 5.)

COMMITMENT ON REFUSAL TO GIVE NAME.—The Justice may commit to gaol an offender against this act, who refuses to give his name or residence, for one month or less, or till he gives the required information. (See *Ib.* s. 6.)

LIMITATION.—"The prosecution of every offence punishable under this act must be commenced within three months next after the commission of the offence, and not otherwise; and the evidence of the party complaining shall be admitted in proof of the offence, and may be accepted as sufficient in the absence of any other evidence." (*Ib.* s. 7.)

COMMITMENT ON DEFAULT.—"In every case of a conviction under this act, where the sum awarded for the amount of the damage or injury done, or imposed as a penalty by any such

Justice as aforesaid, for any offence contrary to this act, is not paid either immediately upon or after the conviction, or within such period as such Justice at the time of the conviction appoints, such Justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding fourteen days, where the amount of the sum awarded or the penalty imposed, or both (as the case may be), together with the costs, do not exceed twenty dollars; and for any term not exceeding two months where the amount with costs exceeds twenty dollars; the commitment to be determinable in each of the cases aforesaid upon payment of the sum or sums awarded, and costs." (*Ib.* s. 8.)

PROCEDURE.—"In all cases in which no other mode of proceeding is specially provided or directed by this act, and in any case where the person is not conveyed before any Justice by the authority of this act, any such Justice as aforesaid, upon information or complaint made by any person of any offence against the provisions of this act, within fourteen days next after the commission of the offence, shall summon the party accused to appear before such Justice, or before any other Justice of the Peace, at a time and place to be by him named, and either on the appearance of the party accused or in default thereof, such Justice or any other Justice, at the time and place appointed for such appearance, may proceed to examine into the matter, and upon due proof made thereof by voluntary confession of the party, or by oath of a credible witness, shall award, order, give judgment, or convict, for the damage or injury, penalty or forfeiture, as the case may be." (*Ib.* s. 9.)

FORM OF CONVICTION.

County (*or as the case may be*) of ——. } Be it remembered, that on the —— day of —— in the year of our Lord —— at —— in the county (*or as the case may be*) of —— A. B. is convicted before me, J. P., one of Her Majesty's Justices of the Peace for the said county, (*or as the case may be*), for that he the said A. B. on the —— day of —— in the year —— at —— in the said —— did (*here specify the offence*), and I, the said J. P., do adjudge the said A. B. for his said offence, to forfeit and pay the sum of (*here state the penalty actually imposed, or the penalty and also the amount of damages for the injury done, or as the case may be*), and also to

pay the sum of —— for costs, and in default of immediate payment of the said sums, to be imprisoned in the —— (*and as the case may be*), to be there kept at hard labour for the space of —— unless the said sums shall be sooner paid: and I direct that the said sum of (*the penalty*) shall be paid as follows, that is to say: one moiety thereof to the —— of the said —— of —— to be by —— applied according to —— and the other moiety thereof, to C. D., of —— the prosecutor, (*or as the case may be*); and that the said sum of —— (*the sum for the amount of injury done, if any sum is awarded*) shall be paid to E. F. (*or* the said C. D. *as the case may be*); and I order that the said sum of —— for costs shall be paid to the said C. D.

Given under my hand and seal, the day and year first above mentioned.

J. P. [L. S.]

The summons is to be considered duly served, if served on the defendant personally, or left at his usual or last known place of abode, in any county or place whatever. (See *Ib.* ss. 10, 11.)

A constable refusing or neglecting to execute such summons may be fined to the amount of twenty dollars, or committed to gaol in default for any time less than one month, or till the penalty be paid. (*Ib.* s. 12.)

One half the *penalty* recovered before a Justice under this act to be paid to the treasurer of the city, town, village or township in which the offence was committed, to be applied in repairing streets or roads therein, and the other half and full costs to the informer. (See *Ib.* s. 13.)

Damages caused by such offences to be paid to the person sustaining the injury. (See *Ib.* s. 14.)

Persons are competent witnesses, though the offender's conviction entitle them to part of the pecuniary penalty. (See *Ib.* s. 15.)

"All actions and prosecutions brought against any person for anything done in pursuance or under the authority of this act, shall be commenced within one month after the fact committed, and not afterwards, and shall be brought and tried in the county or place where the cause of action arose, and not elsewhere." (*Ib.* s. 16.)

"Notice in writing of any such action, and specifying the cause thereof, shall be given to the defendant fourteen clear days at least before the commencement of any such action." (*Ib.* s. 17.)

"The defendant in such action may plead the general issue, and give this act and any other matter or thing in evidence at any trial to be had thereupon." (*Ib.* s. 18.)

"If the cause of action appears to arise from or in respect of any matter or thing done in pursuance and by the authority of this act, or if any such action be brought after the expiration of one month, or be brought in any other county or place than as aforesaid, or if notice of such action be not given in manner aforesaid, or if tender of sufficient amends be made before such action commenced, or if a sufficient sum of money be by or on behalf of the defendant paid into court after such action commenced, the jury shall find a verdict, or (if the case be not tried by jury) judgment shall be given for the defendant." (*Ib.* s. 19.)

"If a verdict pass for the defendant, or if the plaintiff becomes non-suit, or discontinues any such action, or if on demurrer or otherwise judgment be given against him, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as every defendant may have for costs of suit in other cases at law." (*Ib.* s. 20.)

"And although a verdict be given or judgment be rendered for the plaintiff in any such action, the plaintiff shall not have costs against the defendant, unless the judge or judges before whom the trial may be had certifies his or their approbation of the action and of the verdict (if any) obtained thereupon." (*Ib.* s. 21)

An appeal may be made from a conviction under this act to the next Quarter Sessions for the town, city, district, &c., in which the conviction has been made, on giving fourteen days' notice thereof. (See *Ib.* s. 22.)

"And such Court of Quarter Sessions shall hear and determine the appeal in the same manner and form as appeals are usually conducted in the General Quarter Sessions in that part of the Province in which the appeal is brought, and shall award to the party appealing against, or supporting such adjudication or conviction, such costs as to them the said Justices seem reasonable." (*Ib.* s. 23.)

"Wherever in this act, with reference to any person, cattle, animal, matter or thing, any word or words is or are used, importing the singular number or the masculine or feminine gender only, yet such word or words shall be understood to include several persons or animals, as well as one person or animal, and females as well as males, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and where the word 'cattle' is used alone in this act, the same shall be understood and taken for any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, or lamb, or any other cattle or domestic animal." (*Ib.* s. 24.)

This act does not affect any municipal by-laws on the same subject; but such by-laws remain in force till legally repealed. (See *Ib.* s. 25.)

"The council of every township, city, town or incorporated village may pass by-laws for preventing cruelty to animals, and for preventing the destruction of birds; the by-laws for these purposes not being inconsistent with any statute in that behalf." (Con. Stat. U. C. c. 54, s. 266.)

DEAD BODIES—OFFENCES RELATING TO.

INTERMENT OF.—"The council of every city, town and incorporated village may respectively pass by-laws for the following purposes:

"For regulating the interment of the dead, and for preventing the same taking place within the municipality;

"For directing the keeping and returning of bills of mortality; and for imposing penalties on persons guilty of default in doing so." (Con. Stat. U. C. c. 54, s. 294.)

PROTECTION OF GRAVES.—"The council of every township, city, town or incorporated village may pass by-laws for preventing the violation of cemeteries, graves, tombs, tombstones or vaults where the dead are interred." (*Ib.* s. 266.)

DESERTION—ENTICING TO.

Nothing contained in the criminal law of Canada shall alter or affect the laws relating to the government of Her Majesty's land and naval forces. (See Con. Stat. C. c. 90, s. 2.)

ENTICING TO DESERT.—"If any person other than an enlisted soldier in Her Majesty's service, or a sailor engaged in the naval service of Her Majesty, by words or with money, or by any ways, methods, or means whatsoever, directly or indirectly, persuades, encourages, prevails upon, or procures any such soldier or sailor to desert or leave Her Majesty's military or naval service, such offender is guilty of a misdemeanor, and upon conviction before any court of Oyer and Terminer and general gaol delivery in Upper Canada, shall be punished by fine and imprisonment in the common gaol of the county in which the conviction takes place, for such period, being less than two years, as the said court may impose, or by imprisonment at hard labor in the penitentiary for a period not less than two years, in the discretion of the court." (Con. Stat. U. C. c. 100, s. 1.)

"If any person other than an enlisted soldier, or a sailor engaged in the naval service of Her Majesty, conceals, receives or assists any deserter from Her Majesty's naval or military service, knowing him to be a deserter, the person so offending is guilty of a misdemeanor, and upon conviction before any such court as aforesaid shall be liable to the same punishments mentioned in the preceding section of this act." (*Ib.* s. 2.)

DISTRESSES FOR SMALL PENALTIES.

TIME OF SALE.—In warrants of distress the Justice should limit the time of sale to not sooner than *five* and not later than *eight* days, unless any other time be specially named in the act under which the warrant is granted, and the costs attending the distress may be deducted.

COSTS OF DISTRESS.—"No person making any distress for rent or for any penalty, when the sum demanded and due does

not exceed the sum of eighty dollars, in respect of such rent or penalty, and no person employed in making such distress, or doing any act in the course of such distress, or for carrying the same into effect, shall take or receive from any person or out of the produce of the chattels distrained upon and sold, any other costs in respect of such distress than such as are set forth in the schedule hereunto annexed; and no person shall make any charge for anything mentioned in the said schedule, unless such thing has been really done." (Con. Stat. U. C. 123, s. 1.)

EXTORTION.—"If any person offends against any of the provisions in the foregoing section contained, the party aggrieved thereby may apply to any Justice of the Peace for the county, city, or town where the offence was committed, for the redress of such grievance, whereupon such Justice shall summon the person complained of to appear before him, at a reasonable time to be fixed in the summons, and the Justice shall examine into the matter of such complaint, and also hear the defence of the person complained of; and if it appears to the Justice that the person complained of has so offended, such Justice shall order and adjudge treble the amount of the money unlawfully taken and full costs to be paid by the offender to the party aggrieved." (*Ib.* s. 2.)

HOW PENALTY TO BE LEVIED.—"In case of non-payment of any money or costs so adjudged to be paid, the Justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party convicted, rendering to him the overplus if any." (*Ib.* s. 3.)

COMMITMENT.—"In case no sufficient distress can be had the Justice shall, by warrant under his hand and seal, commit the party to the common gaol within the limits of his jurisdiction, there to remain until the order or judgment be satisfied." (*Ib.* s. 4.)

PENALTY FOR PREFERRING UNFOUNDED COMPLAINT.—"If the Justice finds that the complaint of the party aggrieved is not well founded, he may order and adjudge costs, not exceeding four dollars, to be paid by the complainant to the party com-

plained against, which order shall be carried into effect and levied and paid in such manner as is hereinbefore directed, as to the order and judgment founded on the original complaint." (*Ib.* s. 7.)

JUSTICES NOT TO MAKE ORDERS AGAINST LANDLORD.—"Nothing hereinbefore contained shall empower the Justice to make any order or judgment against the landlord for whose benefit any such distress has been made, unless the landlord personally levied the distress." (*Ib.* s. 8.)

PERSONS LEVYING DISTRESS TO GIVE COPY OF CHARGES TO PARTY DISTRAINED.—"Every person who makes and levies any distress shall give a copy of demand, and of all the costs and charges of the distress, signed by him, to the person on whose goods and chattels the distress is levied, although the amount of the rent or penalty demanded exceeds the sum of eighty dollars." (*Ib.* s. 11.)

FORMS.

Order and judgment for complainant.

In the matter of the complaint of A. B. against C. D. for the breach of the provisions of the Consolidated Statutes for Upper Canada, intituled, *An Act* (*insert the title of this Act*), I, E. F., a Justice of the Peace for the ———, do order and adjudge, that the said C. D. shall pay to A. B. the sum of ———, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for (*as the case may be*), and the further sum of ——— for costs in this complaint.

(Signed) E. F.

Order for dismissal.

In the matter of the complaint of A. B. against C. D. for the breach of the provisions of the Consolidated Statutes for Upper Canada, intituled, *An Act* (*here insert the title of this Act*), I, E. F., a Justice of the Peace in and for the ——— do order and adjudge that the complaint of the said A. B. is unfounded (*if costs are given*), and I do further order and adjudge that the said A. B. shall pay unto the said C. D. the sum of ———.

(Signed) E. F.

SCHEDULE OF COSTS AND CHARGES ON DISTRESS FOR SMALL RENTS AND PENALTIES.—Levying distresses under eighty dollars, one dollar; man keeping possession, per diem, seventy-five cents; appraisement, whether by one appraiser or more, two cents on the dollar on the value of the goods; if any printed

advertisement, not to exceed in all one dollar; catalogues, sale and commission and delivery of goods, five cents in the dollar on the net produce of the sale.

RETURN OF WARRANT.—The constable is bound to certify to the Justice, at the time assigned for the return of the warrant, what he has done upon it. He need not, nor should he, return the warrant itself, for that is his own.

If the constable refuses to certify to what he has done, or if he has levied the penalty, and refuses to pay it over, he may be proceeded against by indictment or information; or it seems the Justices before whom the warrant is returnable may fine him.

FRAUDULENT REMOVAL OF GOODS DISTRAINABLE FOR RENT.—By 11 Geo. II. c. 19, s. 1, if any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently or clandestinely convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him lawfully empowered, may in thirty days next after such conveying away, seize the same wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. S. 2. But no landlord shall distrain any goods sold *bonâ fide* and for a valuable consideration, before such seizure made, to any person not privy to such fraud. S. 3. And if any tenant shall so fraudulently remove and convey away the goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing the same, any person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any Court of Record. S. 4. But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord or his agent may exhibit a complaint in writing before *two* Justices of the Peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed, who may summon the parties concerned, examine the facts and all proper

witnesses upon oath (or if a Quaker, upon affirmation), and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to enquire in like manner of the value of such goods and chattels; and upon full proof of the offence, by order under their hands and seals, the said Justices shall adjudge the offender or offenders to pay *double the value* of the said goods and chattels to such landlord, his bailiff, servant, or agent, at such time as the said Justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress; and for want of such distress may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprise, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. S. 5. Persons aggrieved by order of such Justices may appeal to the next General Quarter Sessions, who may give costs to either party. S. 6. And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such Sessions, the order of the Justices shall not be executed against him in the meantime. S. 7. Where any goods or chattels fraudulently or clandestinely conveyed or carried away, shall be put, placed, or kept in any house, barn, stable, outhouse, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons empowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable, head borough, or other peace officer of the district, &c.); and in case of a dwelling house (oath being first made before a *Justice of the Peace* of a reasonable ground to suspect that such goods or chattels are therein) in the day-time, to break open and enter into such house, barn, stable, outhouse, yard, close, or place, and to take and seize such goods and chattels for the said arrears of rent as he might have done if they had been in any open place.

It appears that in order to justify proceedings under this statute the removal must have taken place after the rent became due.

DISTURBANCE OF PUBLIC WORSHIP.

"Any person who wilfully disturbs, interrupts, or disquiets any assemblage of persons met for religious worship, by profane discourse, by rude or indecent behaviour, or by making a noise either within a place of worship or so near it as to disturb the order or solemnity of the meeting, shall, upon conviction thereof before a Justice of the Peace, on the oath of one or more credible witnesses, forfeit and pay such sum of money, not exceeding twenty dollars, as the said Justice may think fit, and costs, within the period specified for the payment thereof, by the convicting Justice at the time of the conviction; and in default of payment, such Justice shall issue his warrant to a constable to levy such fine and costs within a time to be specified in the warrant; and if no sufficient distress can be found, such Justice shall commit the offender to the common gaol of the district, county or division wherein the offence was committed, for any term not exceeding one month, unless the fine and costs be sooner paid."* (Con. Stat. C. c. 92, s. 18.)

DRILL—ILLEGAL.

"All meetings and assemblies of persons for the purpose of training or drilling, or of being trained or drilled to the use of arms, or for the purpose of practising military exercises or evolutions, without lawful authority, are prohibited; and every person who attends any such meeting or assembly for the purpose of training or drilling any other person or persons to the use of arms, or to the practice of military exercise or evolutions, or who trains or drills any other person or persons to the use of arms, or to the practice of military exercise or evolutions, as

* There will, no doubt, be cases where it would only be just that the person convicted under this section should be kept at hard labour, but the act does not authorize such a punishment.

aforesaid, or who aids or assists therein, is guilty of a misdemeanor, and shall be confined in the Penitentiary for the term of two years, or be punished by fine and imprisonment in the common gaol of the county in which the conviction takes place for any period less than two years; and every person who attends any such meeting or assembly, for the purpose of being, or who at any such meeting or assembly is trained or drilled to the use of arms, or to the practice of military exercise or evolutions, is guilty of a misdemeanor, and shall be punished by fine and imprisonment in the common gaol for any period less than two years, at the discretion of the court." (Con. Stat. U. C. c. 99, s. 1.)

"Any Justice of the Peace, or any constable or peace officer, or any person acting in their aid, may disperse any such unlawful meeting or assembly as aforesaid, and arrest and detain any person present at, or aiding, assisting or abetting, any such assembly or meeting; and the Justice of the Peace who arrests any such person, or before whom any person so arrested is brought, may commit him for trial, unless such person gives bail for his appearance at the then next assizes to answer to any indictment which may be preferred against him, for any such offence against this act." (*Ib.* s. 2.)

"This act shall not prevent any prosecution, by indictment or otherwise, for anything that is an offence within the intent and meaning hereof, and which might have been so prosecuted if this act had not been made, unless the offender has been prosecuted for such offence under this act, and convicted or acquitted thereof." (*Ib.* s. 3.)

"All Justices of the Peace in and for any county in Upper Canada shall have concurrent jurisdiction as Justices of the Peace with the Justices of any other county in all cases as to the carrying into execution the provisions of this act, and as to all matters and things relating to the preservation of the public peace, as fully and effectually as if each of such Justices were in the commission of the peace for each of such counties." (*Ib.* s. 4.)

"The Governor, by and with the advice of the Executive Council, may by proclamation declare that this act shall be

no longer in force in any particular county therein specified; and from and after the period specified in such proclamation, the powers of this act shall no longer be in force in such county; and the Governor, upon such advice as aforesaid, may by proclamation declare any such county to be again within the powers of this act." (*Ib.* s. 5.)

"No person shall be prosecuted for any offence done or committed contrary to the provisions of this act, unless the prosecution be commenced within six months next after the offence committed." (*Ib.* s. 6.)

"Any action or suit brought against any Justice of the Peace, constable, peace officer, or other person, for anything done or acted in pursuance of this act, must be commenced within six months next after the fact committed, and not afterwards; and the venue in any such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant may plead the general issue, and give this act and the special matter in evidence in any trial to be had thereupon; and if such action be brought after the time limited for bringing the same, or if the venue be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant; and in such case, or if the plaintiff becomes nonsuit, or discontinues his action after appearance by the defendant, or if the jury find a verdict for the defendant upon the merits, or if upon demurrer judgment be given against the plaintiff, the defendant shall have double costs, as between attorney and client, to be recovered in the same manner as in other cases." (*Ib.* s. 7.)

DRUNKENNESS.

Drunkenness is punishable, by 21 Jac. 1, c. 7, with the penalty of five shillings, and if the defendant be unable to pay the costs of arrest, conviction, &c., he may be imprisoned for any period not exceeding thirty days. Under the above statute, upon a second offence, the offender may be bound in a recognizance of ten pounds, with two sureties for good behaviour, but conviction must in all cases be had in six weeks.

But the chief regulations with regard to drunkenness must be sought in the by-laws of each municipality, in accordance with the provisions of the Municipal Act. (Con. Stat. U. C., c. 54, s. 284. See article "Spirituous Liquors," *post.*)

ELECTIONS—OFFENCES RELATING TO.

Con. Stat. C. c. 6, as amended by 23 Vic. c. 17, 24 Vic. c. 25, and 27 Vic. c. 8, governs, at present, the elections of members of the Legislature.

False Personation.—"If at the election of a member to serve in the Legislative Council or Assembly, any person knowingly personates and falsely assumes to vote in the name of any other person whose name appears on the proper list of voters, whether such other person be then living or dead, or if the name of the said other person be the name of a fictitious person, every such person shall be guilty of a misdemeanor, and on being convicted thereof shall be liable to a fine not exceeding two hundred dollars, or to be imprisoned for a term not exceeding six months, or both, at the discretion of the court." (Con. Stat. C. c. 6, s. 60.)

Penalty on unqualified Persons voting, and for voting more than once at same Election.—"Any person wilfully voting at any such election, without having at the time of his so voting all the qualifications required by law for entitling him so to vote at such election, knowing at the time that he was not so entitled, shall for so doing incur a penalty of forty dollars, and his vote shall moreover be null and void; and in any action or prosecution instituted, as hereinafter provided, against any such person for the recovery of the said penalty, the burden of the proof of such person having, at the time of his so voting at such election, all the said qualifications, or good reason for believing so, shall fall upon him, and not upon the party instituting such action or prosecution; and any person who votes more than once at the same election, shall for so doing incur a like penalty of forty dollars, and every vote he

gives subsequently to his first vote shall be null and void. (*Ib.* s. 61.)

PENALTY FOR FRAUDULENTLY CONVEYING LANDS IN ORDER TO GIVE A VOTE.—If any lands or tenements are transferred or conveyed to any person, by any title or instrument whatsoever, fraudulently and for the purpose of giving him the qualification requisite to enable him to vote at any election, and if such person votes at such election, upon such lands or tenements, he shall incur a penalty of one hundred dollars." (*Ib.* s. 62.)

KEEPING THE PEACE.—"From the time when any returning officer or deputy returning officer has taken and subscribed the oath of office as such, until the day after the final closing of such election, the returning officer and deputy returning officer respectively shall be conservators of the peace, and invested with the same powers with which Justices of the Peace are invested in this Province; and for maintenance of the peace and of good order at such election, each such returning officer or deputy returning officer may require the assistance of all Justices of the Peace, constables and other persons present at the election, whether at the hustings or at any polling place, to aid him in so doing, and may also swear in as many special constables as he deems necessary; and each such returning officer or deputy returning officer respectively may arrest or cause to be arrested by verbal order, and may place in the custody of one or more constables or other persons, for such time as in his discretion seems expedient, any person disturbing the peace and good order, or may cause such person to be imprisoned for any such offence, under an order signed by him, until any period not later than the final closing of the election or poll, respectively; which order, whether given verbally or in writing, all persons shall obey without delay, under a penalty, for any refusal or neglect so to do, of twenty dollars. No such arrest, detention or imprisonment shall in any manner exempt the person so arrested, detained, confined or imprisoned, from any pains or penalty to which he has become liable by reason of anything by him done, contrary to the true intent or meaning of this act or otherwise." (*Ib.* s. 72.)

WHEN SPECIAL CONSTABLES TO BE SWORN.—On a requisition in writing, made by any candidate, or by his agent, or by any two or more electors, any returning officer or deputy returning officer shall swear in such special constables. (*Ib.* s. 73.)

RETURNING OFFICER MAY DEMAND THE SURRENDER OF ALL ARMS.—"Any returning officer or deputy returning officer may, during any part of the days whereon any such election is to be begun, holden or proceeded with, demand and receive from any person whomsoever any offensive weapon, such as fire-arms, swords, stones, bludgeons, or the like, with which any such person is armed, or which any such person has in his hands or personal possession; and every such person who, upon such demand, declines or refuses to deliver up to such returning officer or deputy returning officer any such offensive weapons as aforesaid, shall be deemed guilty of a misdemeanor, punishable by fine not exceeding twenty dollars, or imprisonment not exceeding three months, or by both, in the discretion of the court whose duty it is to pass the sentence of the law upon such person, upon his conviction." (*Ib.* s. 74.)

CERTAIN BATTERIES DURING ELECTION TIME TO BE DEEMED AGGRAVATED ASSAULTS.—"Every person convicted of a battery committed during any part of the days whereon any such election is to be begun, holden or proceeded with, or on which any poll for such election is to be begun, holden or proceeded with, within the distance of two miles of the place where such election or such poll is to be begun, holden or proceeded with, shall be deemed guilty of an aggravated assault, and shall be punished accordingly." (*Ib.* s. 75.)

ENTERTAINMENT NOT TO BE FURNISHED TO ELECTORS.—"No candidate for the representation of any electoral division shall, with intent to promote his election, nor shall any other person, with intent to promote the election of any such candidate, either provide or furnish entertainment at the expense of such candidate or other person, to any meeting of electors assembled for the purpose of promoting such election, or pay for, procure or engage to pay for any such entertainment; except only that

nothing herein contained shall extend to any entertainment furnished to any meeting of electors by or at the expense of any person or persons at his, her or their usual place of residence." (*Ib.* s. 76.)

WITH CERTAIN EXCEPTIONS, NO STRANGER SHALL COME ARMED INTO ANY PARISH, &C., WHILE THE POLL IS OPEN THEREIN.—Except the returning officer or his deputy, one of the constables or special constables, no person who hath not a stated residence within the locality for at least six months next before the day of such election, shall come, during any part of the days upon which such poll is to remain open, into such locality armed with any kind of offensive weapons, nor approach within a distance of two miles, unless called upon to do so by lawful authority. (See *Ib.* s. 77.)

PARTY ENSIGNS, FLAGS, &C.—"No candidate for the representation of any electoral division, or any other person, shall furnish or supply any ensign, standard, or set of colours, or any other flag, to or for any person or persons whomsoever, with intent that the same should be carried or used in such electoral division on the day of election, or within eight days before such day, or during the continuance of such election, by such person or any other, as a party flag, to distinguish the bearer thereof and those who might follow the same as the supporters of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate; nor shall any person for any reason carry or use any such ensign, standard, set of colours, or other flag, on the day of election, or within eight days before such day, or during the continuance of such election." (*Ib.* s. 78.)

PARTY BADGES.—Section 79 enacts, that no candidate, or other person, with the intent that the same should be worn or used at such election, or within eight days thereof, shall furnish any ribbon, label, or such like, nor shall any person use or wear any ribbon, label or such like badge, on the day of such election, or within eight days thereof. (See *Ib.* s. 79.)

PUNISHMENT FOR CONTRAVENING THE FOUR NEXT PRECEDING SECTIONS.—"Every person offending against the four next pre-

ceding sections shall be deemed guilty of a misdemeanor, punishable by fine not exceeding one hundred dollars, or imprisonment not exceeding six months, or by both, in the discretion of the court passing the sentence of the law upon such person, upon his conviction." (*Ib.* s. 80.)

TAVERNS TO BE CLOSED.—"Every hotel, tavern and shop, in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed during the two days appointed for polling in the wards and municipalities in which the polls are held, in the same manner as it should be on Sunday during divine service, and no spirituous or fermented liquors or drinks shall be sold or given during the said period, under a penalty of one hundred dollars against the keeper thereof if he neglects to close it, and the like penalty if he sells or gives any spirituous or fermented liquors or drinks as aforesaid." (*Ib.* s. 81.)

STEALING OR FALSIFYING DOCUMENTS.—"If any person steals or unlawfully or maliciously, either by violence or stealth, takes from any deputy returning officer or poll clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated, or makes or causes to be made any erasure, addition of names or interlineation of names in, to or upon, or aids, counsels or assists in so stealing, taking, destroying, injuring or obliterating, or in making any erasure, addition of names or interlineation of names in, to or upon any list of voters, or any writ of election, or any return to a writ of election, or any indenture, poll book, certificate or affidavit, or any other document or paper, made, prepared or drawn out according to or for the purpose of meeting the requirements of this act or any of them, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned in the Provincial Penitentiary for any term not exceeding seven nor less than two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award; and it shall not, in any indictment for such offence, be

necessary to allege that the article respecting which the offence is committed is the property of any person, or that the same is of any value." (*Ib.* s. 85.)

ABETTORS.—"Every person who aids, abets, counsels, or procures the commission of any misdemeanor under this act, shall be liable to be indicted and punished as a principal offender." (*Ib.* s. 86.)

HOW PENALTIES RECOVERABLE.—"All penalties imposed by this act shall be recoverable, with full costs of suit, by any person suing for the same by action of debt or information, in any of Her Majesty's courts in this Province having competent jurisdiction; and in default of payment of the amount which the offender is condemned to pay, within the period to be fixed by such court, such offender shall be imprisoned in the common gaol of the place until he has paid the amount which he has been so condemned to pay, and the costs. It shall be sufficient, in any indictment or information for any offence committed contrary to this act, to allege the particular offence charged upon the defendant, and that the defendant is guilty thereof, without mentioning the writ of election, or the return, or the authority of the returning officer founded upon any such writ of election." (*Ib.* s. 87.)

STEALING, &c., WRITS, &c., OF MUNICIPAL ELECTION.—"If any person steals, or unlawfully or maliciously, either by violence or stealth, takes from any deputy returning officer or poll clerk, or from any other person having the lawful custody thereof, or from its lawful place of deposit for the time being, or unlawfully or maliciously destroys, injures or obliterates, or causes to be wilfully or maliciously destroyed, injured or obliterated, or makes or causes to be made any erasure, addition of names or interlineation of names, in, to or upon, or aids, counsels or assists in so stealing, taking, destroying, injuring or obliterating, or in making any erasure, addition of names or interlineation of names in, to or upon any writ of election, or any return to a writ of election, or any indenture, poll book, certificate or affidavit, or any other document or

paper, made, prepared or drawn out according to or for the purpose of meeting the requirements of the law in regard to municipal elections, every such offender shall be guilty of felony, and shall be liable to be imprisoned in the Provincial Penitentiary for any term not exceeding seven nor less than two years, or to be imprisoned in any other place of confinement for any term less than two years, or to suffer such other punishment by fine or imprisonment, or both, as the court shall award; and it shall not, in any indictment for any such offence, be necessary to allege that the article in respect of which the offence has been committed was or is the property of any person, or that the same was or is of any value." (Con. Stat. U. C. c. 54, s. 185.)

EMBEZZLEMENT.*

By Clerks, &c.—"If any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, by virtue of such employment, receives or takes into his possession any chattel, money or valuable security for, or in the name or on the account of his master, and fraudulently embezzles the same or any part thereof, such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant or other person so employed; and such offender shall be liable to any of the punishments

* Embezzlement is only a species of larceny. It is in every respect a precisely similar crime to that which is committed by a servant who receives property from his master and appropriates it. This is larceny, because the possession of the master continues in law until the wrongful appropriation by the servant. The case which was held not to be larceny, was that of a banker's clerk who received money from a customer and appropriated it; and the reason given was, that as the employer had never had possession of the money, he had never been wrongfully deprived of the possession of it. The statutes against embezzlement, however, made the master's possession commence from the moment that his property came into the servant's hands. Where a person is charged with embezzlement he is not to be acquitted altogether if the offence turns out to be larceny, but may be convicted of larceny, and *vice versâ* on a charge of larceny. But this does not allow a conviction of larceny on facts which amount to an embezzlement only.

which the court may award as hereinbefore last mentioned."* (Con. Stat. C. c. 92, s. 42.)

MISAPPLICATION BY AGENTS, &c.—"If any money or security for the payment of money having been entrusted to any banker, merchant, broker, attorney or other agent, with a direction in writing to apply such money or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and such person, in violation of good faith, and contrary to the purpose so specified, in any wise converts to his own use or benefit such money, security or proceeds, or any part thereof respectively, every such offender shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or suffer such other punishment by fine or imprisonment, or by both, as the court may award." (*Ib.* s. 43.)

"If any banker, merchant, broker, attorney or other agent

* A few remarks as to persons within the meaning of this section may be necessary. All servants, whether of individuals or corporations, are within the statute. As to clerks, the following are some of the cases which have been decided:—A person employed to travel on commission for orders and to collect debts, was held to be a clerk within the act, though employed by many different houses on each journey, and though he did not live with any of his employers, nor act in any of their counting houses. But in another similar case the defendant was considered as an agent. The servant of several partners is held to be the servant of each. A coach-driver was held to be the servant of one of the proprietors of the coach. Apprentices, though under the age of eighteen years, are within the act. The same rule holds with regard to a person only occasionally employed; but he must have been in the employ of the prosecutor at the time the offence was committed. A clerk to a savings' bank may be considered as the servant of the trustees, though elected by the managers. A member of and secretary or treasurer to a society, was held to be the servant of the trustees, though the society was not an enrolled one. But a person cannot be convicted of embezzlement as clerk or servant of an illegal society. Where a servant is to receive part of the price of an article as his pay, and appropriates more than his share, he is guilty of embezzlement, even where the servant made the article himself out of his master's materials. Where money is received contrary to the terms of employment, it is not within the act. If the servant has no authority to receive the money, he cannot be guilty of embezzlement, though the money is paid to him on the supposition that he has such authority. The act also applies to a servant who embezzled money received from a customer, to whom the master gave it to try the servant's honesty. It is not sufficient to prove the receipt of money, and that it is not entered in account; a denial of the receipt or a false account must be shown. There must be proof of a specific sum embezzled; a general deficiency is not sufficient.

having been entrusted with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this Province or of the United Kingdom of Great Britain and Ireland, or of Great Britain, or of Ireland, or of any British colony or Foreign State or Country, or in any fund of any body corporate, company or society for safe custody, or for any special purpose, without any authority to sell, negotiate, transfer or pledge the same, and such person in violation of good faith, and contrary to the purpose for which such chattel, security or power of attorney has been entrusted to him, sells, negotiates, transfers, pledges, or in any manner converts to his own use or benefit such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney relates, or any part thereof, such offender shall be guilty of a misdemeanor, and shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned." (*Ib.* s. 44.)

"Nothing hereinbefore contained relating to agents shall affect any trustee in or under any instrument whatever, or any mortgagee of any property real or personal, in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney or other agent from receiving any money which may become actually due and payable upon or by virtue of any valuable security according to the tenor and effect thereof, in such manner as he might have done if this act had not been passed; nor from selling, transferring or otherwise disposing of any securities or effects in his possession, upon which he has any lien, claim or demand, entitling him by law so to do; unless such sale, transfer, or other disposal extended to a greater number or part of such securities or effects than was requisite for satisfying such lien, claim or demand." (*Ib.* s. 45.)

FACTORS PLEDGING GOODS ENTRUSTED TO THEM.—"If any factor or agent, entrusted for the purpose of sale with any goods or merchandize, or entrusted with any bill of lading, warehouse keeper's or wharfinger's certificate or warrant or order for

delivery of goods or merchandize, deposits or pledges for his own benefit and in violation of good faith any such goods or merchandize, or any of the said documents as a security for any money or negotiable instrument, borrowed or received by such factor or agent at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, such offender shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or suffer such other punishment by fine or imprisonment, or by both, as the court may award." (*Ib.* s. 46.)

"No such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same were not made a security for or subject to the payment of any greater sum of money than the amount which at the time of such deposit or pledge was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent." (*Ib.* s. 47.)

EXPENSE.—"No banker, merchant, broker, factor, attorney, or other agent as aforesaid, shall be convicted by any evidence whatever as an offender against this act, in respect of any act done by him, if he, at any time previously to his being indicted for such offence, disclosed such act on oath, in consequence of the compulsory process of any court of law or equity in any action, suit or proceeding *bonâ fide* instituted by any party aggrieved, or if he disclosed the same in an examination or deposition before any commissioner of bankruptcy." (*Ib.* s. 50.)

BY TRUSTEES.—"If any person being a trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, does, with intent to defraud, convert or appropriate the same, or any part thereof, to or for his own use or purposes, or does, with intent as aforesaid, otherwise dispose of or destroy such property or any part thereof, he shall be guilty of a misdemeanor." (*Ib.* s. 51.)

"If any person, being a trustee of any money or other property for the benefit either wholly or partially of some other person, or for any public or charitable purpose, converts or appropriates the same or any part thereof to or for his own use or purposes, or otherwise wilfully disposes of the same contrary to his duty, so that such money or other property is not forthcoming, and paid or delivered when such person is ordered or decreed by the Court of Chancery or other court having jurisdiction in the matter to pay the same, he shall be deemed to have converted or disposed of the same with intent to defraud within the meaning of the last preceding section of this act, but this present section is to apply to Upper Canada only." (*Ib.* s. 52.)

By Bankers, &c.—"If any person, being a banker, merchant, broker, attorney, or agent, and being entrusted for safe custody with the property of any other person, does, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to or for his own use such property, or any part thereof, he shall be guilty of a misdemeanor." (*Ib.* s. 53.)

Attorneys.—"If any person entrusted with any power of attorney for the sale or transfer of any property, does fraudulently sell or transfer, or otherwise convert such property or any part thereof to his own use or benefit, he shall be guilty of a misdemeanor." (*Ib.* s. 54.)

By Directors, &c.—"If any person, being a director, member, or public officer of any body corporate or public company, fraudulently takes or applies for his own use, any of the money or other property of such body corporate or public company, he shall be guilty of a misdemeanor." (*Ib.* s. 56.)

"If any person, being a director, public officer, or manager of any body corporate or public company, does as such receive or possess himself of any of the money or other property of such body corporate or public company, otherwise than in payment of a just debt or demand, and does with intent to defraud omit to make, or to cause or direct to be made, a full and true

entry thereof in the books and accounts of such body corporate or public company, he shall be guilty of a misdemeanor." (*Ib.* s. 57.)

"If any director, manager, public officer, or member of any body corporate or public company, does, with the intent to defraud, destroy, alter, mutilate or falsify, any of the books, papers, writings or securities belonging to the body corporate or public company of which he is a director or manager, public officer or member, or makes, or concurs in the making of any false entry, or any material omission in any book of account or other document, he shall be guilty of a misdemeanor." (*Ib.* s. 58.)

"If any director, manager, or public officer of any body corporate or public company makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which he knows to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any money or property to such body corporate or public company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanor." (*Ib.* s. 59.)

PUNISHMENT.—"Every person found guilty of a misdemeanor under the ten next preceding sections of this act shall be liable, at the discretion of the court, to be imprisoned in the penitentiary for any term not exceeding three years nor less than two years, or to suffer such other punishment, by imprisonment for any term less than two years, and with or without hard labour, or by fine, as the court shall award." (*Ib.* s. 61.)

EVIDENCE.—"Nothing in the eleven next preceding sections of this act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in Equity, or to answer any question or interrogatory in any civil proceeding in any Court of Law or Equity, or in any Court of Bankruptcy or Insolvency; but no answer to any such bill,

question or interrogatory shall be admissible in evidence against such person in any proceeding under the said sections." (*Ib.* s. 62.)

CONSENT OF ATTORNEY-GENERAL.—"No proceeding or prosecution for any offence included in the fifty-first or fifty-second sections, but not included in any other of the next following sections of this act, shall be commenced without the sanction of Her Majesty's Attorney-General for Upper or for Lower Canada, as the case may be, or in case that office be vacant, of Her Majesty's Solicitor-General for Upper or for Lower Canada, as the case may be." (*Ib.* s. 64.)

IF OFFENCE AMOUNTS TO LARCENY.—"If upon the trial of any person under the fifty-first section or under any section between the fifty-first and the present section, it appears that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanor under the said sections." (*Ib.* s. 65.)

JURISDICTION.—"No misdemeanor against any of the sections in the last section mentioned shall be prosecuted or tried at any Court of General Quarter Sessions of the Peace." (*Ib.* s. 66.)

TRUSTEE, &c. — "The word 'trustee' shall in the next preceding sixteen sections mean trustee on some express trust created by some deed, will, commission, letters patent, appointment to office, or instrument in writing, and shall also include the heir and personal representative of such trustee, and also all executors and administrators, and all assignees in bankruptcy and insolvency, under any act of this Province now or hereafter to be in force.

"The word 'property' shall include every description of real and personal property, goods, raw or other materials, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods; and such word 'property,' shall also denote and include not only such real or personal property as may have been the original subject of a trust, but also any real or personal property into

which the same may have been converted or exchanged, and the proceeds thereof respectively, and anything acquired by such proceeds." (*Ib.* s. 67.)

FRAUDULENT RECEIPTS BY WAREHOUSEMEN.—"If the keeper of any warehouse, or any forwarder, common carrier, agent, clerk, or other person employed in or about any warehouse, or if any other factor or agent, or any clerk or other person employed in or about the business of such factor or agent, knowingly and wilfully gives to any person a writing purporting to be a receipt for, or an acknowledgment of any goods or other property as having been received in his warehouse, or in the warehouse in or about which he is employed, or in any other manner received by him or by the person in or about whose business he is employed, before the goods or other property named in such receipt or acknowledgment have been actually delivered to him as aforesaid, with intent to mislead, deceive, injure or defraud any person or persons whomsoever, although such person or persons may be then unknown; or if any person knowingly and wilfully accepts or transmits or uses any such false receipt or acknowledgment, the person giving and the person accepting, transmitting or using such receipt or acknowledgment shall severally be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any term not exceeding three years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years but not less than one year." (*Ib.* s. 68.)

"In case any merchandize having, in the name of the owner or of any other person, been shipped or delivered to the keeper of any warehouse or to any other factor, agent or carrier, to be shipped or carried, the consignee afterwards advances any moneys or gives any negotiable security to such owner or other person, then, if after any such advance the said owner or other person for his own benefit and in violation of good faith, and without the consent of such consignee first had and obtained, makes any disposition of such merchandize different from and inconsistent with the agreement in that behalf between such owner or other person aforesaid and such con-

signee at the time of or before such money being so advanced or such negotiable security being so given, with the intent to deceive, defraud or injure such consignee, the owner or other person aforesaid, and each and every other person knowingly and wilfully acting and assisting in making such disposition for the purpose of deceiving, defrauding or injuring such consignee, shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any period not more than three years nor less than two years, or be imprisoned in some other prison or place of confinement for any term less than two years but not less than one year; but no person shall be subject to prosecution under this section who had, before making a disposition of the merchandize as aforesaid, paid or tendered to the consignee the full amount of any advance made thereon." (*Ib.* s. 69.)

"If any offence in the two last preceding sections mentioned be committed by the doing of anything in the name of any firm, company or copartnership of persons, the person by whom such thing is actually done, or who connives at the doing thereof, shall be deemed guilty of the offence, and not any other person. (*Ib.* s. 79.)

By Municipal Officers.—"All books, papers, accounts, documents, moneys and valuable securities, respectively, by any person or officer appointed or employed by or on behalf of any council, kept or received by virtue of his office or employment, shall be the property of the corporation; and in case any such person or officer refuses or fails to deliver up or pay over the same respectively to the corporation, or to any person authorized by the council to demand them, he shall be deemed guilty of a fraudulent embezzlement thereof, and may be prosecuted and punished in the same manner as a servant fraudulently embezzling any chattel, money or valuable security of his master; but nothing herein shall affect any remedy of the corporation or of any other person against the offender or his sureties, or any other party; nor shall the conviction of the offender be receivable in evidence in any suit, at law or in equity, against him." (Con. Stat. U. C. c. 54, s. 184.)

By Revenue Officers.—"All books, papers, accounts and documents, of what kind soever, and by whom and at what cost soever the paper and materials thereof have been procured or furnished, kept by or used, or received or taken into the possession of any officer or person employed or having been employed in the collection or management of the revenue, or in accounting for the same, by virtue of his employment as such, shall be deemed to be chattels belonging to Her Majesty; and all moneys or valuable securities received or taken into his possession by virtue of his employment, shall be deemed to be moneys and valuable securities belonging to Her Majesty.

"If any such officer or person at any time fraudulently embezzles any such chattel, money or valuable security (and any refusal or failure to pay over or deliver up any such chattel, money or valuable security to any officer or person who, being duly authorized by the Governor-in-council, demands the same, shall be a fraudulent embezzlement thereof), he shall be deemed to have feloniously stolen the same, and may be indicted and proceeded against, and, being convicted thereof, shall be liable to be punished, in the same manner as any servant who, having fraudulently embezzled any chattel, money or valuable security, received or taken into his possession by virtue of his employment for or on the account of his master, and being in law deemed to have feloniously stolen the same, may be indicted, proceeded against and punished.

"Nothing herein contained shall prevent, lessen or impede any remedy which Her Majesty or any other party has against the offender or his sureties, or against any other party whomsoever; but nevertheless the conviction of any such offender shall not be received in evidence in any suit or action, in law or in equity, against him." (Con. Stat. C. c. 16, s. 40.)

By Officers of Savings Banks.—"If any officer or servant of any such bank fraudulently embezzles any chattel, money or valuable security belonging to such bank (and any unjustifiable refusal or failure to pay over or deliver up any such chattel, money or valuable security, on demand, to the directors of the bank, or to any person by them authorized to demand and

receive the same, shall be held to be a fraudulent embezzlement thereof), he shall be deemed to have feloniously stolen the same, and may be indicted and proceeded against, and, being convicted thereof, shall be punished, in the same manner as any servant who, having fraudulently embezzled any chattel, money or valuable security received or taken into his possession by virtue of his employment for or on account of his master, and, being in law deemed to have feloniously stolen the same, may be indicted, proceeded against and punished." (Con. Stat. C. c. 56, s. 54.)

By Officers, &c., of Charitable Associations.—"If any officer, secretary, treasurer, trustee or member of any such society, obtains undue possession of, misappropriates, embezzles or withholds from the other members, officers or other persons entitled to demand and receive the same, the whole or any portion of the funds, moneys or other property of the society, and continues to withhold the same after due demand for the restoration and payment of the same has been made by some one or more members or officers duly appointed by or on behalf of the body or society, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall, at the discretion of the court, be imprisoned in the penitentiary for any term not exceeding three years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or suffer such other punishment by fine or imprisonment, or by both, as the court may award." (*Ib.* c. 74, s. 8.)

"The printed or written rules of such society in force for the time being, and the appointment of any officer, secretary, treasurer, trustee, or enrolment of any member, certified under the hand of the presiding officer for the time being and the seal of the society, and the books, minutes and other documents of the society, relative to any portion of the matter then in question, may be received in evidence in any proceedings in any court of civil or criminal jurisdiction against any of the parties mentioned in the last preceding section charged with the offence therein stated." (*Ib.* s. 9.)

STATUTE OF FRAUDS EXTENDED TO CONTRACTS FOR GOODS TO BE DELIVERED AT A FUTURE TIME.—"The seventeenth section of an act passed in England in the twenty-ninth year of the reign of King Charles the Second, intituled, 'An act for the prevention of frauds and perjuries,' shall extend to all contracts for the sale of goods of the value of forty dollars and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery." (Con. Stat. U. C. c. 44, s. 11.)

ON INDICTMENT FOR EMBEZZLEMENT, PARTY MAY BE CONVICTED OF LARCENY.—"If upon the trial of any person indicted for embezzlement, as a clerk or servant, or as a person employed in the capacity of clerk or servant, it be proved that he took or disposed of the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk, servant or person employed in the capacity of a clerk or servant, as the case may be; and thereupon such person shall be punished in the same manner as if he had been convicted on an indictment for such larceny." (Con. Stat. C. c. 99, s. 58.)

ON INDICTMENT FOR LARCENY, PARTY MAY BE CONVICTED OF EMBEZZLEMENT—A PARTY TRIED FOR EMBEZZLEMENT OR LARCENY NOT TO BE AGAIN TRIED ON THE SAME FACTS.—"If upon the trial of any person indicted for larceny it be proved that he took or disposed of the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement; and thereupon such person shall be punished in the same manner as if he had been convicted upon an indictment for such embezzlement; and no person so tried for embezzlement or larceny as aforesaid shall be afterwards

prosecuted for larceny or embezzlement upon the same facts." (*Ib.* s. 59.)

EVIDENCE RESPECTING MONEY.—"In case of embezzlement, or of obtaining money or bank notes under false pretences, it shall be sufficient to describe such money or bank notes simply as money, without allegation, so far as regards the description of the property, specifying any particular coin or bank note; and such averment shall be sustained by proof that the offender embezzled or obtained any piece of coin, or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part has been returned accordingly." (*Ib.* s. 60.)

EMBRACERY.

Embracery is an attempt to influence a jury in their verdict, by one aiding them, or by promises, entreaties or entertainments.

The giving of money to a juror after the verdict, without any preceding contract, is an offence savouring of embracery; but not so the payment of a juror's travelling expenses. Analogous to this offence is that of persuading or endeavouring to persuade a witness from attending to give evidence, which is punishable also by fine and imprisonment. It is no matter that the attempt has been unsuccessful.

"Notwithstanding anything herein contained, every person who is guilty of the offence of embracery, and every juror who wilfully or corruptly consents thereto, shall be respectively proceeded against by indictment or information, and be punished by fine and imprisonment, in like manner as such person and juror might have been before the passing of this act." (Con. Stat. U. C. c. 31, s. 166.)

ESTREAT.

If the condition of a recognizance be broken, such recognizance becomes forfeited; and, being *estreated*, or extracted from

the record, and ordered to be forfeited, the fine remains to be levied by the sheriff.

ESTREAT OF RECOGNIZANCE.—"In case any person bound by recognizance for his appearance (or for whose appearance any other person has become so bound) to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault, or to articles of the peace, makes default, the officer of the court by whom the estreats are made out shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person or his surety was so bound, together with the residence, trade, profession or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether by reason of the non-appearance of such person the ends of justice have been defeated or delayed." (Con. Stat. C. c. 99, s. 120.)

"Every such officer shall, before any such recognizance be estreated, lay such list, if at a court of oyer and terminer or gaol delivery in any district or county, or at any of Her Majesty's superior courts of Records in this Province, before one of the Justices of those courts respectively; or if at a Session of the Peace, before two of the Justices of the Peace who attended such court; who are respectively required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as appears just; and no officer of any such court shall estreat or put in process any such recognizance without the written order of the Justice or Justices of the Peace before whom respectively such list has been laid." (*Ib.* s. 121.)

"All fines, issues, amerciaments and forfeited recognizances, not otherwise provided for, set, imposed, lost or forfeited, by or before any court of General Quarter Sessions of the Peace, shall, within twenty-one days after the adjournment of such court, be fairly entered and extracted on a roll by the clerk of the peace, which roll shall be made out in duplicate, and shall be signed by the clerk of the peace." (Con. Stat. U, C., c. 117, s. 3.)

"One of the said rolls shall remain deposited in the office of the clerk of the peace, and the other of such rolls shall, so soon as the same is prepared, be sent by the clerk of the peace, with a writ of *fieri facias* and *capias*, according to the form to this act annexed, to the sheriff of the county in which such Court of Quarter Sessions was held." (*Ib.* s. 4.)

"Such writ shall be authority to the sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made; and every person so taken shall be lodged in the common gaol of the county until satisfaction be made, or until the court of General Quarter Sessions of such county, upon cause shewn by the party as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with." (*Ib.* s. 5.)

"Except in the cases of persons bound by recognizance for their appearance, or for whose appearance any other person has become bound to prosecute or give evidence, and for which provision is made in the Consolidated Statute of Canada respecting the procedure in criminal cases, in every case of default whereby a recognizance has become forfeited, if the cause of absence be made known to the court in which the party was bound to appear, the court, on consideration of such cause, and considering also whether by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and with respect to all recognizances estreated, and all fines imposed by any court, for the non-attendance of any juror or constable, or of any public officer bound to attend at such court, if it appears to the satisfaction of the Judge who presided at such court, or in the case of proceedings before any court of General Quarter Sessions of the Peace, if it appears to the chairman and any two of the Justices who presided at such court that the absence of the person for whose appearance any recognizance was entered into, or that the absence of any person fined for non-attendance

was owing to circumstances which rendered such absence justifiable, such Judge or the chairman and Justices aforesaid may make an order directing that the sum forfeited upon such estreated recognizance, or the fine imposed in any such case as aforesaid, shall not be levied." (*Ib.* s. 6.)

"And for such purpose the clerk of assize, or clerk of the peace, before sending to the sheriff any roll, with a writ of *fieri facias* and *capias*, as directed by this act, shall submit the same to the Judge who presided at the assizes, or to the chairman who presided at the Court of Quarter Sessions, for his revision; and such Judge, or such chairman taking to his assistance two of the Justices who presided with him at the sessions, may make a minute on the said roll and writ of any such forfeited recognizances and fines as he or they think fit to direct not to be levied; and the sheriff shall observe the direction in such minute written upon such roll and writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine." (*Ib.* s. 7.)

"The Court of Queen's Bench, or Common Pleas, or Court of General Quarter Sessions, into which any writ of *fieri facias* and *capias*, issued under this act, is returnable, may inquire into the circumstances of the case, and may, in its discretion order the discharge of the whole of the forfeited recognizance or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as may to such court appear just; and such order shall accordingly be a discharge to the sheriff, or to the party, according to the circumstances of the case." (*Ib.* s. 11.)

"This act is not to affect the provisions of the Consolidated Statute of Canada respecting the procedure in criminal cases relating to the *estreat* of the recognizance of any person bound for his appearance or for the appearance of any other person to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault or to articles of the peace." (*Ib.* s. 15.)

"The words 'Quarter Sessions' include Recorders' Courts." (*Ib.* s. 16.)

EXCISE.

INTERPRETATION.—"The word 'spirits,' wherever it occurs in this act means, and includes all spirits, strong waters and spirituous liquors of any kind; and the words 'beer or other malt liquor,' whenever they occur in this act, mean and include beer, ale, porter, lager beer, or other malt liquor of any kind." (Con. Stat. C. c. 19, s. 1.)

DISTILLING WITHOUT LICENSE.—"No person, other than a person licensed in the manner hereinafter provided, shall act as a distiller in this Province, or shall brew, manufacture, rectify or make therein any spirits from malt, grain, potatoes, mangel-wurzel or other vegetables, or from molasses, sugar or other saccharine matter, under a penalty of forty dollars for each day on which such offence is committed, and on pain also of forfeiting, over and above the penalty aforesaid, all spirits distilled, brewed, manufactured or made in contravention to this act, and every still, mash-tub, fermenting-tun or other vessel, machinery or utensil of any kind used by him, or in his possession or on his premises;

"And for the avoidance of doubt, it is hereby declared, that any establishment or place used for the rectifying of spirits by any process, is a distillery within the meaning of this act, and must be licensed under the penalties herein provided." (*Ib.* s. 2.)

BREWING WITHOUT LICENSE.—"No person, other than a person licensed as hereinafter mentioned, shall brew or make any beer or other malt liquor of any kind, or act as a brewer in this province, under a penalty of forty dollars for each day on which such offence is committed, and on pain also of forfeiting every wash-tub, fermenting-vessel, machine or utensil of any kind used by him as a brewer, or for making any such beer or malt liquor as aforesaid, or adapted for making the same, and being in his possession or on his premises." (*Ib.* s. 3.)

NAME TO BE ON DISTILLERIES, &C.—"Every party licensed as a distiller or as a brewer shall have his name and calling as such inscribed in legible characters, and exposed on some con-

spicuous part of the front of the building or premises in which such calling is exercised, under a penalty of twenty dollars for each day on which he exercises such calling without complying with the requirements of this section." (*Ib.* s. 7.)

NEGLECTING OR FALSIFYING ENTRIES IN BOOKS.—"Every person or persons licensed as a distiller or as a brewer shall keep a book or books in the form to be furnished from time to time by the Revenue Inspector, and to be open at all seasonable hours to his inspection; and for any wilful false entry, or any wilful neglect to make any entry hereby required, the distiller or brewer shall incur a penalty of two hundred dollars; and the Revenue Inspector may at all times demand to be shown all the stock of such grain, vegetable production or other substance aforesaid then on the premises mentioned in the license." (*Ib.* s. 11.)

NEGLECTING ACCOUNTS, &c.—"Every licensed distiller or brewer shall, at the time of rendering such account as aforesaid to the Revenue Inspector, pay over to that officer the amount of duties which by such account appear to be payable; and if any licensed distiller or brewer refuses or neglects to render such account, or to pay over such duties as aforesaid, according to the true intent and meaning of this act, he shall by such refusal or neglect in either case incur a penalty of eighty dollars." (*Ib.* s. 13.)

HINDERING INSPECTION OF PREMISES, &c.—"Every licensed distiller or brewer shall, on being thereunto required by the Revenue Inspector, produce to that officer at any reasonable time and hour, and shall allow him to take copies and extracts from such books and accounts as are requisite to enable him to verify any account rendered as aforesaid; and shall at all times and hours allow the inspector, or any person employed by him, free access to the buildings or premises in which such distiller or brewer exercises his calling as such, and more especially at all times when he is performing any operation therein by reason of which duty may become payable, under a penalty of eighty dollars for each neglect or refusal to comply with the requirements of this section;

"Except that no Revenue Inspector shall require any such book or account to be produced to him elsewhere than at the place where such distiller or brewer carries on his business as such, or shall require admittance between the hours of sunset and sunrise, except when the distiller or brewer is at work, or the inspector is accompanied by a peace officer." (*Ib.* s. 18.)

WORKING WITHOUT NOTICE.—"No distiller or brewer shall work his distillery or brewery at any time unless he has given at least ten days' previous notice in writing to the Revenue Inspector of his intention to work the same at such time; and such notice shall not extend to a longer period than thirty days from the delivery thereof to the Revenue Inspector.

"Any use made of any still, mash-tub or fermenting tun for the purpose of distillation, mashing or fermentation, shall be deemed to be a working of the distillery, and an acting as a distiller or brewer within the meaning of this act.

"And if any distiller or brewer works his distillery or brewery at any time for which he has not given notice of his intention to work the same, he shall for each day on which he works such distillery or brewery incur the same penalty and forfeiture as if he had worked the same without a license." (*Ib.* s. 19.)

NEGLECT, &C., TO FURNISH MEANS FOR INSPECTION.—"Every licensed distiller or brewer shall at all times furnish the Revenue Inspector or his assistant with lights, ladders, measures and other things requisite to enable him properly to examine, inspect, measure or guage any still, auxiliary vessel, mash-tub, fermenting-tun or other vessel, or grain, vegetable or other substance or matter as aforesaid, on the premises of such distiller or brewer or any part of such premises, under a penalty of eighty dollars for any refusal or neglect to comply with the requirements of this section." (*Ib.* s. 20.)

SEARCH WARRANT.—"The Revenue Inspector, or any person or persons acting under him or by his directions, having first obtained a search warrant for that purpose from some Justice of the Peace, who may grant the same on affidavit made before

him, and to his satisfaction, and stating reasonable grounds for the issuing thereof, may, at any hour between sunrise and sunset, enter into and search any house, building or place mentioned in such search warrant as being one in which affidavit has been made of reasonable cause to suppose that an unlicensed still, auxiliary vessel, mash-tub, fermenting-tun or other vessel is illegally in use, or the provisions of this act otherwise contravened." (*Ib.* s. 22.)

PENALTY FOR NEGLECTING TO RENDER ACCOUNTS.—"Any duties payable under this act shall be recoverable at any time after the same ought to be accounted for and paid, whether an account of the quantity of spirits as aforesaid on which they are payable has or has not been rendered as aforesaid; but in the case last mentioned the party by whom such duties are payable shall incur a penalty equal to three times the amount of such duties, for his neglect to render an account relative to the same as hereinbefore required, in addition to any other penalties incurred by him by such neglect; and all such duties shall be recoverable, with full costs of suit, in favor of Her Majesty." (*Ib.* s. 23.)

PENALTIES—HOW RECOVERABLE.—"The penalty or forfeiture incurred for any offence against the provisions of this act may be sued for and recovered before any two or more Justices of the Peace having jurisdiction in the place where the offence was committed, on the oath of two credible witnesses. And any such penalty may, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, under the warrant of such Justice or Justices; or the said Justices may, in their discretion, commit the offender to the common gaol until the penalty, with the costs of the prosecution, shall be paid. And one moiety of every such pecuniary penalty or forfeiture shall belong to Her Majesty, and shall be paid and applied in the manner hereinafter provided. The other pecuniary penalties, and the other moiety, shall belong to the person suing for the same." (*Ib.* s. 25.)

EVIDENCE.—"Any Revenue Inspector, officer of the Customs, or other person employed in the collection of the revenue,

shall be a competent witness under this act, provided he be not himself the prosecutor or a party to such suit, although he believes himself to have some expectation of advantage to himself from the successful termination of the prosecution or suit. The credibility of his testimony is left to the court, jury, Justice, or Justices before whom the suit is brought." (*Ib.* s. 27.)

INVALID SEIZURES.—"No person making any seizure under this act shall be liable to damages, if such seizure be declared not valid; provided the court, Justice, or Justices declaring it not valid certify that there was probable cause for making it." (*Ib.* s. 28.)

REFUSING TO GIVE EVIDENCE.—"Any person refusing or neglecting to appear before any Justice or Justices, or any court, to give evidence, when summoned, concerning any alleged offence against the provisions of this act, shall, for such refusal or neglect, incur a penalty of twenty dollars, to be recovered in the manner hereinbefore provided for the recovery of other penalties of like amount." (*Ib.* s. 29.)

EXPLOSIVE SUBSTANCES.

INFLICTING BODILY INJURY.—"Any person who unlawfully and maliciously sends or delivers to, or causes to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or casts or throws upon or otherwise applies to any person any corrosive fluid or other destructive matter, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby in any of the cases aforesaid any person is burnt, maimed, disfigured, or disabled, or receives some other grievous bodily harm, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (Con. Stat. C. c. 91, s. 14.)

"Any person who unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burns, maims

or disfigures, disables or does any grievous bodily harm to any person, shall be guilty of felony." (*Ib.* s. 15.)

ATTEMPTS TO INFLICT BODILY INJURY:—"Any person who unlawfully and maliciously causes any gunpowder or other explosive substance to explode, or sends or delivers to, or causes to be taken or received by any person, any explosive substance or any other dangerous or noxious thing, or casts or throws at or upon, or otherwise applies to any person any corrosive fluid or other destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure or disable any person, or do some grievous bodily harm to any person, shall, although no bodily injury be effected, be guilty of felony." (*Ib.* s. 16.)

"Any person guilty of any felony in the two last preceding sections mentioned shall be imprisoned in the penitentiary for any term not less than seven years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 17.)

POSSESSING EXPLOSIVE SUBSTANCES WITH ILLEGAL INTENT.—"Any person who knowingly makes or manufactures, or has in his possession, any gunpowder, explosive substance, or other dangerous or noxious thing, or any machine, engine, instrument, or other thing, with intent by means thereof to commit, or for the purpose of enabling any other person to commit, any offence against this act, shall be guilty of a misdemeanor, and shall be imprisoned in the common gaol for any term less than two years."* (*Ib.* s. 18.)

DESTROYING BUILDINGS.—"If any person unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or damages the whole or any part of any dwelling-house, any person being therein, such offender shall be guilty of felony." (Con. Stat. C. c. 93, s. 2.)

"If any person unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or damages any building, with intent to murder any

* Offences under the three last sections are now triable at Quarter Sessions or Recorder's Court.

person, or whereby the life of any person is endangered, such offender shall be guilty of felony." (*Ib.* s. 3.)

ATTEMPTS TO DESTROY BUILDINGS.—"If any person unlawfully and maliciously places or throws on, into, upon, against, or near any building or vessel, any gunpowder or any other explosive substance, with intent to do any bodily damage to any person, or to destroy or damage any building or vessel, or any machinery, working tools, fixtures, goods or chattels, the offender shall, whether or not an explosion takes place, and whether or not an injury be effected to any person, or any damage be done to any building, vessel, machinery, working tools, fixtures, goods or chattels, be guilty of felony, and such offender shall be imprisoned in the penitentiary for any time not exceeding seven years nor less than two years, or be imprisoned in any common gaol for any period less than two years."* (*Ib.* s. 11.)

JURISDICTION OF JUSTICES RESPECTING EXPLOSIVE SUBSTANCES. —"Any Justice of the Peace of any district, city, town, or place in which any gunpowder or other explosive, dangerous, or noxious substance is suspected to be made or kept for the purpose of being used in committing an offence under this act, may, upon reasonable cause assigned upon oath by any person or persons, issue a warrant under his hand and seal for searching in the daytime any house, shop, cellar, yard, or other building, or any vessel in which such gunpowder or other explosive, dangerous, or noxious substance is suspected to be so made or kept; and every person acting in the execution of any such warrant may seize any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine, or instrument or thing which he has good cause to suspect is intended to be used in committing or enabling any other person to commit any offence against this act, and with all convenient speed after the seizure shall remove the same to such proper place as he thinks fit, and detain the same until

* Offences under these three sections are not triable at Quarter Sessions or Recorder's Court.

ordered by a Judge of one of Her Majesty's superior courts of criminal jurisdiction to restore it to the person who may claim the same." (*Ib.* s. 34.)

"The searcher or seizer shall not be liable to any suit for such detainer, or for any loss of, or damage which may happen to the property, other than by the wilful act or neglect of himself or of the persons whom he entrusts with the keeping thereof." (*Ib.* s. 35.)

"Any gunpowder, explosive substance, or dangerous or noxious thing, or any machine, engine, instrument, or thing intended to be used in committing or enabling any other person to commit any offence against this act, and seized and taken possession of under the provisions hereof, shall, in the event of the person in whose possession the same may be found, or of the owner thereof, being convicted for any offence under this act, be forfeited; and the same shall be sold under the direction of the court before which any such person may be convicted, and the proceeds thereof shall be paid into the hands of the Receiver General to and for the use of the province." (*Ib.* s. 36.)

"In every case of a summary conviction under this act, where the sum forfeited for the amount of the injury done, or imposed as a penalty by the Justice, is not paid either immediately after the conviction, or within such period as the Justice at the time of conviction appoints, the convicting Justice (when not otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding two months, where the amount of the sum forfeited, or of the penalty imposed, or of both, together with the costs, do not exceed twenty dollars, and for any term not exceeding four months where the amount with costs exceeds twenty dollars, and does not exceed forty dollars, and for any term not exceeding six months where the amount with costs exceeds forty dollars; the commitment to be determinable in each case upon the payment of the amount and costs." (*Ib.* s. 37.)

BY-LAWS REGULATING THE STORAGE, &c., OF GUNPOWDER, IN CITIES, TOWNS AND INCORPORATED VILLAGES.—"The council of every city, town and incorporated village may respectively pass by-laws for regulating the keeping and transporting of gunpowder and other combustible or dangerous materials; for regulating and providing the support by fees, of magazines for storing gunpowder belonging to private parties, for compelling persons to store therein, for acquiring land as well within as without the municipality for the purpose of erecting powder magazines, and for selling and conveying such land when no longer required therefor." (Con. Stat. U. C. c. 54, s. 294.)

IN POLICE VILLAGES.—"The trustees of every police village shall execute and enforce therein the regulations following:

"No person shall keep or have gunpowder for sale, except in boxes of copper, tin or lead, under a penalty of five dollars for the first offence, and ten dollars for every subsequent offence.

"No person shall sell gunpowder, or permit gunpowder to be sold, in his house, storehouse or shop, outhouse or other building at night, under a penalty of ten dollars for the first offence, and twenty dollars for every subsequent offence." (*Ib.* s. 312.)

EXTRADITION.

EXTRADITION OF FUGITIVE CRIMINALS FROM THE BRITISH NORTH AMERICAN PROVINCES.—"If any person against whom a warrant has been issued by the Chief Justice of the Queen's Bench, or by any other magistrate having competent authority in any of Her Majesty's Provinces or Governments in North America respectively, for any felony or other crime of a high nature, escapes into or is found in any part of Upper Canada, any Justice of the Peace of the county, city or place where such person resides or is supposed to be, may, upon due proof being made of the hand-writing of the magistrate who issued the warrant, endorse his the said Justice's name thereon, and such warrant so endorsed shall be a sufficient authority to all persons to whom such warrant was originally directed, and also

to all constables of the county, city or place where such warrant has been so endorsed, to execute the same, by apprehending the person against whom such warrant has been granted, and to convey him into the province from which such warrant was originally issued, to be dealt with according to law." (Con. Stat. U. C. c. 95, s. 1.)

"Before any such warrant is so endorsed the person applying for its endorsement shall enter into a recognizance with sufficient sureties, in a sum not less than two hundred dollars, to indemnify this province, and every part thereof, against any expense that may arise or accrue from the apprehension of such offender, and also to bring the said offender or cause him to be brought to trial; and the magistrate to whom such application is made is hereby authorized to take such recognizance." (*Ib.* s. 2.)

OF OFFENDERS FROM THE UNITED STATES.—Con. Stat. of Canada, c. 89, provides for the apprehension and surrender to the United States by Canada, and to Canada by the United States, of all persons charged with any of the following crimes, viz.: murder, assault with intent to commit murder, piracy, arson, robbery, forgery, or the utterance of forged paper. The first, second and third sections of the last mentioned act were repealed, and the following substituted therefor—

For s. 1: "Upon complaint made under oath or affirmation (in cases where affirmations can be legally taken instead of oaths), charging any person found within the limits of this province with having committed within the jurisdiction of the United States of America any of the crimes enumerated or provided for by the said treaty, it shall be lawful for any Judge of any of Her Majesty's Superior Courts in this province, or any Judge of a County Court in Upper Canada, or any Recorder of a city in this province, or any Police Magistrate or Stipendiary Magistrate in this province, or any Inspector and Superintendent of Police empowered to act as a Justice of the Peace in Lower Canada, to issue his warrant for the apprehension of the person so charged, that he may be brought before such Judge or other officer; and upon the said

person being brought before him under the said warrant, it shall be lawful for such Judge or other officer to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as according to the laws of this Province would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be so accused had been committed herein, it shall be lawful for such Judge or other officer to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until surrendered, according to the stipulation of the said treaty, or until discharged according to law; and the said Judge or other officer shall thereupon forthwith transmit or deliver to the Governor a copy of all the testimony taken before him, that a warrant may issue, upon the requisition of the United States for the surrender of such person, pursuant to the said treaty."

For s. 2: "In every case of complaint as aforesaid, and of a hearing upon the return of a warrant of arrest, copies of the depositions upon which the original warrant may have been granted in the United States, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended."

For s. 3: "It shall be lawful for the Governor, upon a requisition made as aforesaid by the United States, by warrant under his hand and seal, to order the person so committed to be delivered to the person or persons authorized to receive such person in the name and on behalf of the United States, to be tried for the crime of which such person stands accused, and such person shall be delivered up accordingly; and the person or persons authorized as aforesaid may hold such person in custody, and take him to the territories of the said United States, pursuant to the said treaty; and if the person so accused escapes out of any custody to which he stands committed, or to which he has been delivered as aforesaid, such person may be retaken in the same manner as any person accused of any crime against the laws of this province may be retaken upon escape."

S. 4 gives power to the Superior Courts, after the prisoner has been in custody two months under such a commitment, upon application shewing that notice has been given to the Provincial Secretary, to discharge the prisoner out of custody, unless sufficient cause be shown why such discharge should not be made.*

FELONY.

WHAT IT IS.—Felony includes the higher class of offences, as murder, rape, burglary, arson, and may be either capital or not. Capital felonies are punishable with death; felonies not capital, by imprisonment in the provincial penitentiary for life, or for any period not less than two years, or in any other prison for any period less than two years.

Private persons may arrest felons by a warrant from a Justice of the Peace, or even by their own authority, and are bound to assist a peace officer in taking any felon into custody.

All offences which do not amount to felony are misdemeanors; as perjury, battery, libel, conspiracy, attempts and solicitations to commit felonies, and various injuries to property from a spirit of wantonness or revenge. In cases of felony the accused has the right to challenge peremptorily twenty of the jury, without assigning any cause: this right does not exist on trial for cases of misdemeanor.

FENCES.

REPAIR OF DIVISION FENCE.—"Each of the parties occupying adjoining tracts of land shall make, keep up and repair a just proportion of the division or line fence on the line dividing such tracts, and equally on either side thereof." (Con. Stat. U. C., c. 57, s. 1.)

WHAT CONSTITUTES A LAWFUL FENCE.—"Any fence coming within the meaning of a lawful fence in any by-law of the

* The commitment in a case under this act must be special, as no form has been given by the act.

See "Extradition Commitment."

municipal council in that behalf is to be considered a lawful fence; and when no such by-law exists, any fence viewers, when called upon, are to exercise their own judgment, and decide what they consider to be a lawful fence." (*Ib.* s. 2.)

DIVISION FENCES NOT TO BE REMOVED WITHOUT NOTICE.—"The owner of the whole or part of a division or line fence which forms part of the fence enclosing the occupied or improved land of another person, shall not take down or remove any part of such fence: 1. Without giving at least twelve months' previous notice of his intention to the occupier or owner of such adjacent enclosure. 2. Nor unless such last-mentioned owner or occupier, after demand made upon him in writing by the owner of such fence, refuses to pay therefor a sum to be determined, as provided in the next sub-section. 3. "Nor, if such owner or occupier will pay to the owner of such fence, or of any part thereof, such sum as three fence viewers, or a majority of them, in writing, determine to be the reasonable value thereof." (*Ib.* s. 3.)

COST OF DIVISION FENCE.—"When any land which has laid unenclosed or in common is afterwards enclosed or improved, the occupier shall pay to the owner of the division or line fence standing upon the divisional line between such land and the enclosure of any other occupier or proprietor, a just proportion of the value thereof." (*Ib.* s. 4.)

WATER FENCES.—"When a water fence, or a fence running into the water, is necessary, the same is also to be made in equal parts, unless the parties otherwise agree." (*Ib.* s. 5.)

LANDS DIVIDED BY A RIVER OR CREEK.—"When lands belonging to or occupied by different persons are divided from each other by any river, brook, pond or creek, which of itself is not a sufficient barrier, and it is impracticable to fence upon the true boundary line, the fence shall be set up on one side of the river, brook, pond, or creek, or partly on one side and partly on the other, as may be just." (*Ib.* s. 6.)

DITCHES AND WATER-COURSES.—"When it is the joint interest of parties resident to open a ditch or water-course for the purpose of letting off surplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such several parties shall open a just and fair proportion of such ditch or water-course according to their several interests." (*Ib.* s. 7.)

FENCE VIEWERS.—"Three fence viewers of the municipality, or a majority of them, may decide all disputes between the owners or occupants of adjoining lands, or land so divided or alleged to be divided as aforesaid, in regard to their respective rights and liabilities under this act, and also all disputes respecting the opening, making or paying for ditches or water-courses under this act." (*Ib.* s. 8.)

AWARD IN WRITING.—"Every determination or award of fence viewers shall be in writing, signed by such of them as concur therein, and they shall transmit the same (or a certified copy thereof) to the clerk of the municipality, and shall also deliver a copy to every party requiring the same, and such determination or award shall be binding on the parties thereto." (*Ib.* s. 9.)

DISPUTES.—"When the dispute is as to the commencement or extent of the part of the fence to be made or repaired by either party, or as to the opening of a ditch or water-course, or as to the part, width, depth, or extent that any person should open or make, either party may by writing notify the viewers, and name in the notice for the investigation thereof the time and place of meeting, and shall also notify the other party to appear at the same time and place." (*Ib.* s. 10.)

FENCE VIEWERS TO ATTEND, &C.—"On receiving such notice the fence viewers shall attend at the time and place named, and after being satisfied that the other party has been also duly notified, they shall examine the premises and hear the parties and their witnesses if demanded, and according to the subject matter of the reference shall decide the commencement or

extent of the part of the fence which either claims to have made or repaired, or refuses to make or repair, or shall divide or apportion the ditch or water-course among the several parties, having due regard to the interests of each in the opening thereof, and shall fully determine the matters in dispute." (*Ib.* s. 11.)

The fence viewers on any reference as to a ditch or water-course what length each party shall open, should they find one of the parties not sufficiently interested in the opening to make him liable for any portion, but that it is necessary for the other party that it should be continued across such tract, they may award it to be done at the expense of the other; after such award the last mentioned party may open the ditch or course across the tract at his own cost without being a trespasser. (See *ib.* s. 12.)

REVIEW OF AWARD.—When by reason of a material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award previously made under this act ceases, in the opinion of either of the parties, to be equitable, such party may obtain another award of the fence viewers by a like mode of proceeding; and if the fence viewers called upon to make a subsequent award find no reason for making an alteration, the whole cost of the reference shall be borne by the party at whose instance it has been made." (*Ib.* s. 13.)

REFUSAL OF ONE PARTY.—"If any party neglects or refuses on demand made in writing as aforesaid to open or make and keep open his share of the ditch or water-course, allotted or awarded by the fence viewers within the time allowed by them, any of the other parties may, after completing his own share or proportion, open the share or proportion allotted to the party in default, and shall be entitled to recover not exceeding forty cents per rod from the party so in default." (*Ib.* s. 14.)

"If, after an award of fence viewers, or after being required by a demand in writing by the party occupying the adjoining tract, or a tract separated therefrom by a river, pond or creek, a

party in the occupation of any tract of land neglects or refuses, for a period of thirty days, to make or repair (as the case may be) his proportion of the division or line fence between his tract and such adjoining or separated tract, or if the party making the demand neglects or refuses for the like period to make or repair his own proportion of the fence, either party, after first completing his own proportion, may make or repair in a substantial manner and of good sound materials the whole or any part of the fence which ought to have been made or repaired by the other party, and may recover from him the value thereof." (*Ib.* s. 15.)

How amount shall be ascertained. — To ascertain the amount payable by any person who, under the authority of this act, makes or repairs a fence, or makes, opens or keeps open any ditch or water-course which another person should have done, and to enforce the payment of such amount, the following proceedings shall be taken:

1. "Any of the persons interested may apply to a Justice of the Peace residing within the municipality or township in which any such fence is situated, and if there be no such Justice residing therein, then to any Justice of the Peace residing in any adjacent municipality or township, and thereupon such Justice shall issue a summons under his hand and seal, directed by name to three fence viewers of the municipality in which the fence is situated, requiring them to attend at the place and on the day and hour therein mentioned, to view such fence and to appraise the same.

2. "The Justice shall at the same time issue a summons to the party so having neglected or refused to make or repair his proportion thereof (who shall thenceforth be considered the defendant in the case), requiring him to appear at the same time and place, to shew cause why the party claiming payment (who shall thenceforth be considered the plaintiff in the case) should not recover the same.

3. "The fence viewers shall be personally served with the summons at least four days before the day named for their attendance.

4. "If either party desires to procure the attendance of any person to give evidence before the fence viewers, the Justice shall, upon the application of such party, issue a summons to such witness or witnesses to attend before the fence viewers at the time and place mentioned in the summons to the fence viewers.

5. "The fence viewers when met at the time and place appointed shall, whenever desired by either party, or whenever they themselves think it proper, and may administer an oath to any witness, which oath is to be in the following form,

'You do solemnly swear that you will true answer make to 'such questions as may be asked of you by either of the fence 'viewers now present, touching the matters which they are 'now to examine and determine. So help you God.'

6. "The fence viewers, or any two of them being present, shall, after having duly examined the fence and received evidence, determine whether the plaintiff is entitled to recover any and what sum from the defendant.

7. "In case the commencement or extent of the part of the division or line fence which each should make or repair had not been previously determined by the award of fence viewers named in the summons, or any two of them, they shall determine the same; and if they determine that the plaintiff is entitled to recover from the defendant, they shall also state what distance of fence the defendant should have made or repaired.

8. "The fence viewers, if required by either party before they report, shall give to such party a copy of their determination.

9. "The fence viewers shall report their determination in writing, under their hands, to the Justice who issued the summons, and such determination shall be final.

10. "The Justice to whom the determination of the fence viewers is returned, shall transmit the same to the clerk of the division court having jurisdiction over that part of the municipality, and shall certify and transmit a copy thereof to the clerk of the municipality, to be entered in the book in which the municipal proceedings are recorded.

11. "After the expiration of forty days from the time of the determination, the clerk of the division court shall issue an execution against the goods and chattels of the defendant in the same manner as if the party in whose favour the determination has been made had recovered judgment in the division court for the sum which the fence viewers have determined him entitled to receive with costs." (*Ib.* s. 16.)

FEES.—"The following fees, and no more, may be received under this act, by the persons mentioned, that is to say:

"*To the Justice.*—For summons to fence viewers, twenty-five cents; for subpœna, which may contain three names, twenty-five cents; for transmitting copy of fence viewers' determination to division court and to clerk of the municipality, twenty-five cents.

"*To Fence Viewers.*—One dollar per day each; if less than half a day employed, fifty cents.

"*To the Bailiff or Constable employed.*—For serving summons or subpœna, twenty cents; mileage, per mile, six and two-thirds cents.

"*To Witness*, per day each, fifty cents." (*Ib.* s. 17.)

DISBURSEMENTS.—"Upon the party in whose favor the determination of the fence viewers has been made making an affidavit, which the clerk of the division court may administer, that such fees have been duly paid and disbursed to the persons entitled thereto, the clerk shall include the amount thereof in the execution, and when collected shall pay over the same to the said party." (*Ib.* s. 18.)

BY-LAWS.—"The council of every township, city, town or incorporated village, may pass by-laws:

"For settling the height and description of lawful fences;

"For regulating the height, extent and description of lawful division fences; and for determining how the costs thereof shall be apportioned; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not provided for under this act; but until such by-laws be made, the act respecting line-fences and water-courses shall continue applicable to the municipality."

FERRIES—OFFENCES RELATING TO.

INTERFERING WITH LICENSED FERRYMAN.—"If any person unlawfully interferes with the rights of any licensed ferryman, by taking, carrying or conveying, at any such ferry, across the river or stream on which it is situate, any person, cattle, carriage or wares in any boat, vessel or other craft, for hire, gain, reward, profit or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any lessee of the Crown of any such ferry, such offender, upon conviction thereof before a Justice of the Peace, shall forfeit and pay such sum of money, not exceeding twenty dollars, as the Justice may direct, which sum shall be paid to the party aggrieved, except where he has been examined in proof of the offence, in which case the money shall be applied and accounted for in the same manner as any penalty imposed for a breach of the peace." (Con. Stat. U. C., c. 46, s. 10.)

PARTIES MAY KEEP BOATS FOR THEIR OWN USE.—"Any person may keep at any such ferry a boat, vessel or other craft for his own private use, or may use for the accommodation of himself or his employer, his own or his employer's boat, vessel or craft, to cross the stream on which such ferry is situate; but such privilege shall in no wise be used to take, carry or convey any other persons, for hire, gain, reward, or profit, or hope thereof, or directly or indirectly to enable any of such other persons to evade the payment of tolls at such ferry." (*Ib.* s. 11.)

COMMITMENT IN DEFAULT.—"In case the sum forfeited be not paid immediately after conviction, the convicting Justice may commit the offender to the common gaol of the county, there to be imprisoned for a term not exceeding two months, unless the forfeiture and the costs be sooner paid." (*Ib.* s. 12.)

APPEAL.—"Any party aggrieved by any conviction or decision under this act may appeal from such conviction or decision in the manner and under the conditions of the act respecting appeals in cases of summary conviction." (*Ib.* s. 13. See Appeals, *ante*, p. 136.)

EVIDENCE OF TITLE.—"On the trial of any offender against this act, every license heretofore issued or issued under this act shall be *primâ facie* evidence of title to the ferry." (*Ib.* s. 14.)

FIRES.

IN CITIES, TOWNS AND INCORPORATED VILLAGES.—"The council of every city, town and incorporated village may respectively pass by-laws for the following purposes:

"For appointing fire-wardens, fire-engineers and firemen, and promoting, establishing and regulating fire companies, hook-and-ladder companies, and property-saving companies;

"For providing medals or rewards for persons who distinguish themselves at fires; and for granting pecuniary aid or otherwise assisting the widows and orphans of persons who are killed by accidents at such fires;

"For preventing or regulating the use of fire or lights in stables, cabinet makers' shops, carpenters' shops, and combustible places;

"For preventing or regulating the carrying on of manufactories or trades dangerous in causing or promoting fire;

"For preventing, and for removing or regulating the construction of any chimney, flue, fire-place, stove, oven, boiler or other apparatus or thing which may be dangerous in causing or promoting fire;

"For regulating the construction of chimneys as to dimensions and otherwise; and for enforcing the proper cleaning of the same;

"For regulating the mode of removal and safe keeping of ashes;

"For regulating and enforcing the erection of party walls;

"For compelling the owners and occupants of houses to have scuttles in the roofs thereof, and stairs or ladders leading to the same;

"For causing buildings and yards to be put in other respects into a safe condition to guard against fire or other dangerous risk or accident;

"For requiring the inhabitants to provide so many fire-buckets in such manner and time as may be prescribed; and

for regulating the examination of them, and the use of them at fires;

"For authorizing appointed officers to enter at all reasonable times upon any property subject to the regulations of the Council, in order to ascertain whether such regulations are obeyed, or to enforce or carry into effect the same;

"For making regulations for suppressing fires, and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire;

"For regulating the conduct, and enforcing the assistance of, the inhabitants present at fires; and for the preservation of property at fires." (Con. Stat. U. C. c. 54, s. 294.)

In Police Villages.—"The trustees of every police village shall execute and enforce therein the regulations following:

"Every proprietor of a house more than one story high shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, under a penalty of one dollar for every omission; and a further penalty of two dollars for every week such omission continues;

"Every householder shall provide himself with two buckets fit for carrying water in case of accident by fire, under a penalty of one dollar for each bucket deficient.

3. "No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, under a penalty not exceeding two dollars for non-compliance.

4. "No person shall pass a stove-pipe through a wooden or lathed partition or floor, unless there is a space of four inches between the pipe and the wood-work nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there shall be at least ten inches in the clear between any stove and any lathed partition or wood work, under a penalty of two dollars.

5. "No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp unless well enclosed in a lantern,

nor with a lighted pipe or cigar, or with fire not properly secured, under a penalty of one dollar.

6. "No person shall light or have a fire in a wooden house or outhouse unless such fire is in a brick or stone chimney, or in a stove of iron or other metal, properly secured, under a penalty of one dollar.

7. "No person shall carry fire or cause fire to be carried into or through any street, lane, yard, garden or other place, without having such fire confined in some copper, iron or tin vessel, under a penalty of one dollar for the first offence, and of two dollars for every subsequent offence.

8. "No person shall light a fire in a street, lane or public place, under a penalty of one dollar.

9. "No person shall place hay, straw or fodder, or cause the same to be placed, in a dwelling house, under a penalty of one dollar for the first offence, and of five dollars for every week the hay, straw or fodder is suffered to remain there.

10. "No person, except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders in any wooden vessel, box or thing not lined or doubled with sheet-iron, tin or copper, so as to prevent danger of fire from such ashes or cinders, under a penalty of one dollar.

11. "No person shall place or deposit any quick or unslaked lime in contact with any wood of a house, outhouse or other building, under a penalty of one dollar, and a further penalty of two dollars a day until the lime has been removed, or secured to the satisfaction of the inspecting trustee, so as to prevent any danger of fire.

12. "No person shall erect a furnace for making charcoal of wood under a penalty of five dollars." (*Ib.* s. 312.)

FISH AND OIL—OFFENCES RELATING TO.

Penalty on Inspector.—"If any inspector brands any cask, keg or box of any description of fish or oil mentioned in this act, the contents of which he has not inspected according to the true intent and meaning of this act, or if he knowingly permits any other person or persons to use his brands, he shall,

on being thereof convicted incur a penalty of four dollars for each cask, keg or box so branded contrary to the provisions of this act, and shall forthwith be removed from office." (Con. Stat. C. c. 50, s. 16.)

FRAUDULENTLY BRANDING.—"If any person other than an inspector appointed under this act wilfully effaces or obliterates, or causes to be effaced or obliterated, from any cask, keg or box, having undergone inspection, all or any of the brands or marks thereupon imprinted or branded by any inspector, or fraudulently impresses or brands upon any cask, keg or box, any of the brands or marks by this act required to be branded on casks, kegs or boxes containing fish or oil so inspected as aforesaid, or empties any cask, keg or box already branded, in order to put other fish or oil therein for sale or exportation, such person shall on conviction for each offence incur a penalty not exceeding eighty dollars." (*Ib.* s. 17.)

PENALTY ON INSPECTOR TRADING.—"No inspector appointed under this act shall trade in, buy or sell directly or indirectly, or otherwise, than for the consumption of himself and family, fish or oil of any kind or description to which this act relates, under the penalty of one hundred dollars for each act of contravention or disobedience of the provisions of this section, and on pain of being dismissed from office." (*Ib.* s. 18.)

DISTRIBUTION OF FINE.—"One moiety of the pecuniary fines and of the forfeitures under this act shall belong to Her Majesty, and the other moiety to the complainant." (*Ib.* s. 19.)

LIMITATION OF TIME.—"All penalties incurred under this act must be sued for within three months from the commission of the offence." (*Ib.* s. 20.)

IMPRISONMENT FOR NON-PAYMENT.—"Any offender who does not forthwith pay the fine and costs he has been condemned to pay shall be committed to gaol for a term not less than one month nor more than six months, at the discretion of the magistrate before whom he has been convicted." (*Ib.* s. 21.)

RECOVERY OF PENALTY.—"Every penalty or forfeiture imposed by this act, or the regulations to be made under it, may be recovered on complaint before the superintendent of fisheries, or any stipendiary or other magistrate, in a summary manner, and the proceedings and the costs to be recovered shall be the same as are provided by law in either section of the province in other cases where summary jurisdiction is given to magistrates." (*Ib.* s. 22.)

FISH—OFFENCES RELATING TO.

RIGHTS OF FISHERMEN.—"All subjects of Her Majesty, but none other, may, for the purposes of trade and commerce,

1. "Take bait and fish in any of the harbours, roadsteads, bays, creeks or rivers of the Province;

2. "Land anywhere on public property for the purpose of salting, curing and drying fish;

3. "Cut wood there for the purpose of repairing stages, drying places, flakes, hurdles, cook rooms, and other purposes necessary or useful for preparing or dealing with fish;

4. "Take possession of any unoccupied portion of the beach which may be necessary for curing fish, and hold the same so long as the same shall not have been abandoned during twelve consecutive months;

5. "Any such subject having occupied any such portion of the beach, may during the year next after he shall have been twelve months without occupying it, demand personally or by his attorney the value of his flakes, stages and other property, of which a new occupant shall have taken possession; and

6. "Carry away his buildings and improvements after the close of the fishing season, after having so demanded the same from the new occupant." (Con. Stat. C. c. 62, s. 3.)

"But nothing contained in the third section shall affect private property, or prevent the Crown from disposing or taking possession of any public land or beach so occupied for fishing purposes." (*Ib.* s. 4.)

"The Governor in Council may cause to be set apart any river or other water for the natural or artificial propagation of salmon trout or other fish." (*Ib.* s. 5.)

"The Governor in Council may grant permission to fish in rivers within the King's posts." (*Ib.* s. 6.)

Throwing ballast, offal, &c., in any river, harbour, or roadstead in which fishing is carried on, or within three miles of the coast of the mainland, prohibited under a fine of not more than eighty dollars; but such offal may be buried on the land at a distance of not less than an acre from the beach. (See *ib.* s. 7.)

"No one shall anchor near the shore so as to impede the throwing and hauling of seines or the setting of standing nets." (*Ib.* s. 8.)

"No one shall set standing nets in such a manner as to impede the throwing or hauling of seines." (*Ib.* s. 9.)

Navigation not to be impeded. (See *ib.* s. 10.)

Penalty for contravening sections 8, 9 & 10, fine not over twenty dollars, and offender to be also liable for damages." (See *ib.* s. 11.)

Penalty for removing fishing stakes, fine not to exceed twenty dollars. (See *ib.* s. 12.)

Fishing tackle is exempt from seizure except for fines and penalties under this act. (See *ib.* s. 13.)

Penalty for deserting fishing service, fine not exceeding forty dollars, or imprisonment for not more than one month. (See *ib.* s. 14.)

For seducing away persons engaged therein, a like penalty of forty dollars, or imprisonment. (See *ib.* s. 15.)

A fisherman is to have a first lien on his employer's property in preference to any other creditor, for securing his wages. (See *ib.* s. 16.)

Penalty of not more than one hundred dollars nor less than ten dollars, with forfeiture of vessel and apparatus, for disturbing oyster beds, except at times permitted by the Commissioner of Crown Lands. (See *ib.* s. 17.)

No one shall use mackerel, herring nor capin seines for cod-fishing, and meshes of cod seines not to be under three inches in extension in the arms, and two and a half inches in the bottom, under penalty, and on pain of forfeiture of the seine. (See *ib.* s. 18.)

Nets not to be used in Burlington Bay nor in Dundas Marsh. (See *ib.* s. 19.)

PERIOD FOR SALMON FISHING LIMITED, EXCEPTION AS TO FLY FISHING.—"No one shall fish for, catch or kill salmon in any way whatever between the first day of August and the first day of March in any year; except only that it shall be lawful to fish for salmon with a rod or line in the manner known as fly-surface-fishing, from the first of March to the first of September in any year." (*Ib.* s. 20.)

"No one shall use any net or take salmon in any way whatever at any salmon-leap, or where any artificial salmon-pass shall have been constructed, nor in any pools or ponds where salmon are wont to spawn." (*Ib.* s. 21.)

OBSTRUCTING MAIN CHANNEL OF RIVERS.—"Whoever obstructs the main channel or course of any river, either by placing therein nets or fishing apparatus of any kind, or any obstacle of any kind whatever, for the purpose of taking salmon or any other species of fish, shall thereby incur for each offence a fine not exceeding twenty dollars, and the forfeiture of his fishing apparatus; and in no case shall the said channel or course so left open be less than one-third of the whole breadth of such river." (*Ib.* s. 22.)

FISHWAYS TO BE ATTACHED TO DAMS.—"The owner of any dam or slide where fish may ascend, shall, for the purpose of affording a passage to the fish, attach and maintain to each dam or slide a fishway of such form and dimensions as shall be determined by the superintendent of fisheries, under a penalty of four dollars for each day on which he shall fail so to do, after two months' notice by the superintendent. (*Ib.* s. 23.)

PENALTY.—"Any salmon taken in contravention of the twentieth section of this act shall subject all persons concerned in the breach of the said section, whether the actual transgressors or accessories, to a penalty of not more than forty dollars nor less than twenty dollars, together with the forfeiture of the fish, canoe, boat or other vessel in which the fish may have been placed, or to imprisonment for a period of not more than six months nor less than three months." (*Ib.* s. 24.)

KILLING SPECKLED TROUT.—"No one shall kill any kind of speckled trout, in any way whatever, between the twentieth October and the first of April in any year, nor shall any speckled trout be killed at any time by means of nets or seines in any inland lake, river or stream in Upper Canada." (*Ib.* s. 28.)

TIME FOR CATCHING SALMON TROUT, &c.—"Except in the Lakes Huron and Superior, no one shall catch salmon trout between the fifteenth day of November and the first day of February." (*Ib.* s. 30.)

"Except as aforesasd, no one shall catch maskinonge, pickerel nor black bass, between the fifteenth of March and the fifteenth day of May." (*Ib.* s. 31.)

FISH NOT TO BE SOLD IN THE CLOSE SEASON.—"No one shall buy, sell or have in possession any salmon, salmon trout, nor any kind of trout, bass, nor maskinonge taken in contravention of this act; and any fish so taken may be declared forfeited by any magistrate whomsoever; and any person so found in possession of any of the aforementioned fish or of any part or portion thereof, shall be held to have obtained the same in violation of the provisions of this act, except only upon legal proof to the contrary, which proof shall devolve wholly upon the accused." (*Ib.* s. 32.)

FISH POUNDS.—"No one shall construct any fish pound in any river." (*Ib.* s. 33.)

LIME AND DRUGS NOT TO BE USED TO CATCH FISH.—"No one shall throw lime or any chemical substance or drug into any water frequented by any one of the kind of fish mentioned in this act, and any person found guilty of having thrown lime or any other chemical substance or drug in such waters shall be subjected to a penalty of not less than twenty dollars, and not more than forty dollars for each offence." (*Ib.* s. 36.)

PENALTIES.—"Every penalty or forfeiture imposed by this act, or the regulations to be made under it, may be recovered on complaint before the superintendent of fisheries or any stipendiary or other magistrate, in a summary manner, upon

the oath of one credible witness; and the proceedings and the costs to be recovered shall be the same as provided by law in other cases where summary jurisdiction is given to magistrates, except in so far as it may be otherwise herein provided." (*Ib.* s. 37.)

"In every case of contravention of this act, or of the regulations to be made under it, for which no other penalty is provided, the offender shall incur a fine of not less than eight dollars nor more than twenty dollars." (*Ib.* s. 38.)

LIMITATION OF PROSECUTIONS.—"All penalties incurred under this act must be sued for within twelve months from the commission of the offence." (*Ib.* s. 39.)

COMMITTAL FOR NON-PAYMENT.—"Any offender who does not forthwith pay the fine and costs he has been condemned to pay shall be committed to gaol for a term of not less than one month, nor more than six months, at the discretion of the magistrate before whom the offender has been convicted." (*Ib.* s. 40.)

DELAY BETWEEN SERVICE AND RETURN OF SUMMONS.—"There shall be not less than three days between the service and the return of the summons to any defendant for the first five leagues, and one day more for each additional five leagues of the distance between the place at which the summons is dated and the place where it is served." (*Ib.* s. 41.)

CONVICTION ON VIEW.—"The superintendent of fisheries or any stipendiary or other magistrate may convict upon view of any of the offences punishable under the provisions of this act." (*Ib.* s. 42.)

DEFENDANT NOT RESIDENT IN THE PROVINCE.—"When the defendant is not a resident in the Province, and it is expedient to proceed against him without delay, the superintendent of fisheries or any stipendiary or other magistrate may, upon complaint, issue a summons returnable immediately to compel the defendant to appear before him without delay, or he may issue a warrant for the apprehension of such defendant simultaneously with the issue of the summons." (*Ib.* s. 43.)

SEARCH.—"The superintendent of fisheries or any stipendiary or other magistrate may search, or grant a warrant to have searched, any vessel or place where he may have cause to believe that any fish taken in contravention of this act may have been concealed." (*Ib.* s. 44.)

APPLICATIONS OF FINES AND FORFEITURES.—"One moiety of the pecuniary fines and of the forfeitures under this act, or under the regulations to be made by virtue thereof, shall belong to Her Majesty, and the other moiety to the complainant." (*Ib.* s. 45.)

WHITE-FISH.—"Any person who uses or employs, or causes to be used or employed, any seine or other nets of a greater length than fifty fathoms for the taking of white-fish in any of the rivers Detroit, St. Clair or Niagara, within Upper Canada, shall for every such offence forfeit the sum of five hundred dollars." (*Ib.* s. 47.)

"Any person found fishing for white-fish in either of the said rivers within Upper Canada, with seines, gill nets or other nets, on the first day of the week, called Sunday, shall forfeit for every such offence the sum of two hundred dollars." (*Ib.* s. 48.)

"Any person who attempts to divert the natural progress or running of the white-fish within Upper Canada, by shingling or other device, shall forfeit for every such offence the sum of five hundred dollars, or be imprisoned not exceeding three months, at the discretion of the court." (*Ib.* s. 49.)

"All forfeitures incurred under the last three preceding sections of this act may be recovered by action of debt, with costs of suit, before any court having competent jurisdiction; one moiety thereof to the person who sues for the same, and the other moiety to be paid into the hands of the Receiver General." (*Ib.* s. 50.)

FORM OF COMPLAINT.

Upper Canada, county (*or* district) of ——.
This —— day of ——, 18—.
To J. S., superintendent of fisheries (*or* a Justice of the Peace for the said county *or* district).

A. B., of ——, complains that C. D., of ——, hath (*state the offence briefly in any intelligible terms, with the time and place at which it was committed*), in contravention of the Fisheries Act: Wherefore the complainant prays that judgment may be given against the said C. D. as by the said act provided. (*Signature*) A. B.

SUMMONS TO DEFENDANT.

Upper Canada, county (*or* district) of ——.

To C. D., of ——, &c.

Whereas complaint hath (*this day*) been made before me that you (*state the offence in the words of the complaint, or to like effect*), in contravention of the Fisheries Act; therefore you are hereby commanded to come before me at —— on the —— day of ——. at —— o'clock in the ——, to answer the said complaint, and to be dealt with according to law.

Witness my hand and seal, this —— day ——, 18—,

J. S., superintendent of fisheries for Upper Canada (*or* Justice of the Peace for ——, *as the case may be*). [L. S.]

SUBPŒNA.

Upper Canada, county (*or* district) of ——.

To E. F., of ——, &c.

Whereas complaint has been made before me that C. D. did (*state the offence as in the summons*), and I am informed that you can give material evidence in the case; therefore you are commanded to appear before me at —— on the —— day of ——, at —— o'clock in the ——, to testify what you know concerning the matter of the said complaint.

Witness my hand and seal, this —— day of —— 18—.

J. S., superintendent, &c. (*as in summons.*) [L. S.]

FORM OF CONVICTION.

Upper Canada, county (*or* district) of ——.

Be it remembered, that on this —— day of —— 18—, at ——, in the said county (*or* district), C. D. of ——, is convicted before me, for that he did (*stating the offence briefly, and the time and place when and where committed*), in contravention of the Fisheries Act; and I adjudge the said C. D. to forfeit (and pay) the sum of —— (*or mention the thing forfeited under this act*), to be applied according to law, and also to pay to A. B. (*the complainant*) the sum of —— for costs.

(*If the penalty be not forthwith paid, add*) And the said C. D. having failed to pay the said penalty and costs forthwith after the said conviction, I adjudge him to be committed to and imprisoned in the common gaol of the county (*or* district) of —— for the period of ——.

Witness my hand and seal, this —— day of —— 18—.

J. S. (*as in summons*). [L. S.]

WARRANT OF COMMITMENT.

Upper Canada, county (*or* district) of ——.

To the constables and peace officers of the county (*or* district) of ——, and the keeper of the common gaol of the said county (*or* district) at ——.

Whereas C. D. of —— was on the —— day of ——, 18—, convicted before me for that he, &c. (*as in conviction*), and I did thereupon adjudge the said C. D. to forfeit and pay to A. B., &c. (*as in conviction*), and whereas the said C. D. has not paid the said penalty or forfeiture and costs; therefore I command you the said constables and peace officers, or any of you, to convey the said C. D. to the common gaol for the —— of —— at ——, and deliver him to the keeper thereof with this warrant; and I command you the said keeper of the said gaol to receive the said C. D. into your custody and keep him safely imprisoned in the said gaol for the space of ——, and for so doing this shall be your sufficient warrant.

Witness my hand and seal, this —— day of ——, 18—.

J. S. (*as in summons*). [L. S.]

FORCIBLE ENTRY AND DETAINER.

The statute 5 Ric. II., st. 1, c, 7, enacts as follows:—"And also the King defendeth, that none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only with peaceable and easy manner; and if any man from henceforth do to the contrary, and thereof be duly convict, he shall be punished by imprisonment of his body, and thereof ransomed at the King's will."

21 Jac. I. c. 15, enacts, that such Judges, Justices, or Justice of the Peace, as by reason of any act or acts of Parliament now in force are authorized and enabled, upon enquiry, to give restitution of possession unto tenants of any estate or freehold of their lands or tenements, which shall be entered upon with force, or from them withholden by force, shall, by reason of this present act have the like and the same authority and ability from henceforth (upon indictment for such forcible entries or forcible holdings before them duly found) to give like restitution of possession unto tenants by term of years, tenants by copy of court, guardians by knight's service, tenants by *elegit*, statute-merchant or staple, of lands or tenements

by them so holden, which shall be entered upon by force, or holden from them by force.*

FOREIGN ENLISTMENT.

Entering into the service of any foreign state without the Queen's consent, or contracting with it any engagement which subjects the party to an influence or control inconsistent with the allegiance due to his sovereign, such as receiving a pension from a foreign prince, without the Queen's leave, is at common law a high misdemeanor, and punishable accordingly. Such also is disobedience to the Queen's command to a subject abroad to return home, or to her writ of *ne exeat regno* to a subject at home, commanding him to continue there.

And, says *Hawkins*, it is so high an offence to prefer the interest of a foreign prince to our own, that any act is criminal which may but incline a man so to do, as to receive a pension from a foreign prince without the leave of our sovereign.

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* The prosecutor must prove: 1. That he was in possession of the premises at the time of the forcible entry; and proof that he was in the actual occupation of the premises, or receiving the rents and profits, is sufficient *primâ facie* evidence thereof. But it is immaterial whether the party in *actual* possession be in *rightful* possession or not, and it is no excuse that the defendant had a right of entry, if his entry was so violent as to cause bodily fear to the occupant.

2. The prosecutor must prove the forcible entry. An entry by breaking doors, windows, &c., whether anybody be in the house or not, is a forcible entry within the statute. So is an entry where personal violence is done or offered to the party in possession, or to his family or servants, or any one keeping possession for him. But an entry by an open window, or by opening the door with a key, or by a mere trick, such as by enticing the owner out and shutting the door on him; or if effected by threats to destroy the owner's goods merely, and not by threats of personal violence, is not a forcible entry. A mere trespass cannot be punished as a forcible entry; there must be such force or show of force as is calculated to present resistance. If, however, while the owner is out of the house the defendant forcibly withhold from returning to it, and in the meantime send persons to take peaceable possession, this is said to be a forcible entry. Where the party entering has in fact no right of entry, all in his company are equally guilty; but if he have such right, then those only who use or threaten violence, or who actually abet those who do, are guilty. A wife may be guilty of a forcible entry into her husband's house, and other persons also, if they assist her in the force, though her entry in itself is lawful.

3. It is necessary to prove the expulsion, and that the prosecutor is still kept out of possession, merely for the purpose of obtaining restitution of the premises; but it is no part of the offence described by the statute, which mentions a forcible entry merely.

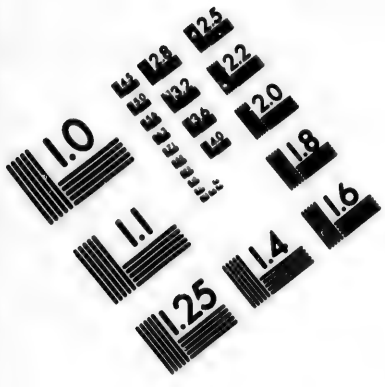
Disobedience to letters from the King to a subject, commanding him to return from beyond the seas, or to his writ of *ne exeat regno*, or proclamation commanding the subject to stay at home, is a high misprision and contempt; and if the subject neglects to return from beyond the seas when commanded, his lands shall be seized till he does return.

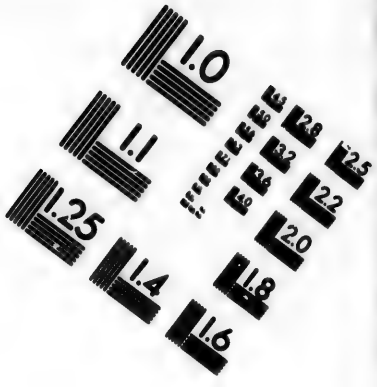
And, in the words of Mr. *Hawkins*, it is a high offence for any subject to deny the King that assistance for the good of the public, either in his councils or wars, which by the law he is bound to give him.

The serving or procuring others to serve foreign states was provided against by several statutes prior to the passing of the 59 Geo. III. c 69; and the statute 3 Jac. I. c. 4, s. 18, made it a felony for any subject to serve any foreign state; and in construction of that act, it was held, that if a party go out of the realm with intent to serve a foreign state, although there be no service in fact, or if a party do actually so serve, though he did not go abroad for that purpose, but on some other occasion, it would be within the act. The offence is now, however, by the 59 Geo. III. c. 69, made a misdemeanor only.

The 59 Geo. III. c. 69, repeals stats. 9 Geo. II. c. 30,; 29 Geo. II. c. 17, and the Irish Acts, 11 Geo. II. and 19 Geo. II.

Sect. 2 enacts, that "If any natural-born subject of his Majesty, his heirs and successors, without the leave or license of his Majesty, his heirs or successors, for that purpose first had and obtained, under the sign manual of his Majesty, his heirs or successors, or signified by order in council, or by proclamation of his Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist, or to enter himself to serve as a soldier, or to be employed, or shall serve in any warlike or military operation in the service of, or for, or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people,





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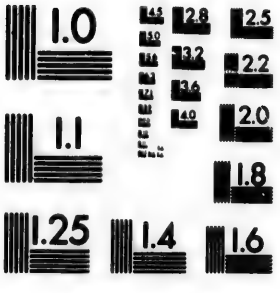

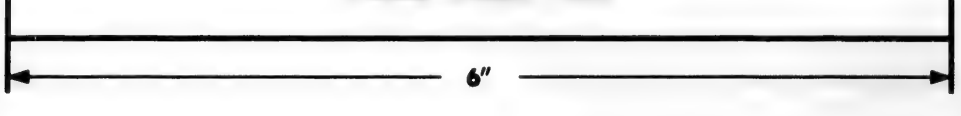

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either as an officer or soldier, or in any other military capacity; or if any natural-born subject of his Majesty shall, without such leave or license as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself to serve as a sailor or marine, or to be employed or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped, or intended to be used for any warlike purpose, in the service of, or for, or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of his Majesty shall, without such leave and license as aforesaid, engage, contract or agree to go, or shall go, to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with an intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of, or for, or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of, or for, or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer, or sailor or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever within the United Kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to his Majesty, shall hire, retain, engage or procure, or shall attempt or endeavour to hire, retain, engage or procure, any person or persons whatever to enlist, or to enter

or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor or marine, either in land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province or part of any province or people, or for, or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of his Majesty's dominion, for the purpose or with intent to be so enlisted, entered, engaged or employed as aforesaid, whether any enlisting money, pay or reward shall have been or shall be actually given or received or not; in any or either of such cases, every person so offending shall be guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

FORGERY.

Of the Great Seal.—"If any person forges or counterfeits or utters, knowing the same to be forged or counterfeited, the great seal of this province, or of the late province of Upper Canada, or of the late province of Lower Canada, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any time not less than two years." (Con. Stat. C. c. 94, s. 1.)

Of the Governor's Seal-at-Arms.—"If any person forges or counterfeits or utters, knowing the same to be forged or counterfeited, the seal-at-arms of the Governor to any commission, grant, appointment, license, warrant, order or other instrument of a public nature, appertaining or relating to the affairs of this province, or to any instrument purporting to be a commission, grant, appointment, license, warrant, order or other instrument of a public nature appertaining or relating to the affairs of this province, or forges any public register or book, appointed by law to be made or kept, or wilfully certifies or utters any writing as and for a true copy of such public register or book, or of any entry therein, knowing such writing to be

counterfeit or false, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not more than fourteen years nor less than five years." (*Ib.* s. 2.)

Of Debentures.—"If any person forges or alters, or offers, disposes of or puts off, knowing the same to be forged or altered, any debenture issued under the authority of any act of the legislatures of the late provinces of Upper Canada or of Lower Canada, or of any act of the legislature of this province, or any stamp or endorsement on or assignment of any such debenture, or any scrip issued by the Commissioner of Crown Lands for the time being, in lieu of or in satisfaction of any right or claim to a grant of land from the Crown in this province, or any part thereof, or any will, testament, codicil or testamentary writing, or any license of marriage, or any bank note, or any bill of exchange, or any promissory note for the payment of money, or any endorsement on, or any assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant or order for the payment of money, with intent in any of the cases aforesaid to defraud any person whatsoever, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not more than ten years nor less than four years." (*Ib.* s. 3.)

Punishment of Death superseded.—"In case by any law at any time in force in any part of this province before this act takes effect, any person was made liable to the punishment of death for forging or altering, or for offering, altering, disposing of or putting off, knowing the same to be forged or altered, any instrument or writing, designated in such law by any special name or description, and if such instrument or writing, however designated, be in law a will, testament, codicil or testamentary writing, or a bill of exchange, or a promissory note for the payment of money, or an endorsement on or assignment of a bill of exchange, or promissory note for the payment of money, within the true intent and meaning of this act, in every such case the person forging or altering such instrument or writing, or offering, uttering, disposing of or

putting off such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender under this act, and be punished in the manner provided in the last preceding section hereof." (*Ib.* s. 4.)

Of Letters Patent.—"If any person forges or alters, or in any way publishes, puts off or utters as true, knowing the same to be forged or altered, any copy of letters patent, or of the enrolment or enregistration of letters patent, or of any certificate thereof, made or given, or purporting to be made or given by virtue of any statute of Upper Canada or of Lower Canada, or of this province, every such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not more than seven years nor less than three years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 5.)

Of Transfers of Stock.—"If any person forges, or alters, or utters, knowing the same to be forged or altered, any transfer of any share or interest of, or in the capital stock of any body corporate, company or society, established by charter or act of Parliament in any part of this province, or forges or alters, or utters, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such capital stock, or receives any dividend or profit payable in respect of any such share or interest, or demands or endeavours to have any such share or interest transferred, or to receive any dividend or profit payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the several cases aforesaid to defraud any person whatsoever; or if any person falsely and deceitfully personates any owner of any such share, interest, dividend or profit as aforesaid, and thereby transfers any share or interest belonging to such owner, or thereby receives any money due to such owner, as if such person were the true and lawful owner, every such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not more than ten years, nor less than four years." (*Ib.* s. 6.)

FALSE PERSONATION OF STOCKHOLDER.—"If any person falsely and deceitfully personates the owner of any share or interest of or in the capital stock of any body corporate, company or society, established by charter or act of Parliament in any part of this province, or any owner of any dividend or profit payable in respect of any such share or interest as aforesaid, or any person having a claim for a grant of land from the Crown in this province, or for any scrip or other payment or allowance in lieu of such grant of land, and thereby endeavours to transfer any share or interest belonging to any such owner, or to receive any money due to any such owner, as if such offender were the true and lawful owner, or to obtain any such grant of land, or any scrip or other payment or allowance in lieu thereof, as if such offender were entitled thereto, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary, for any term not more than seven years nor less than three years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 7.)

OF WITNESS'S NAME.—"If any person forges the name or handwriting of any person as or purporting to be a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any capital stock in this act before mentioned, or receives any dividend or profit payable in respect of any such share or interest, or assigns or transfers any right to obtain a grant from the Crown of lands in this Province, or to obtain any scrip or other payment or allowance in lieu of such grant of land, or utters any such power of attorney or other authority, with the name or handwriting of any person forged thereon as an attesting witness, knowing the same to be forged, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years nor more than seven years, or be confined in any common gaol for any term less than two years." (*Ib.* s. 8.)

OF NOTARIAL ACTS, &c.—"If any person, with intent to defraud any person, forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any

notarial act or instrument or copy purporting to be an authenticated copy thereof, *procès verbal* of any surveyor, or like copy thereof, any judicial record, writ, order, return, exhibit, report, certificate or other document or entry made or filed in any suit or proceeding civil or criminal in any court of justice, or with any officer of such court, or any copy or paper purporting to be an exemplification or authenticated or certified copy of any such judicial record, writ, order, return, exhibit, report, certificate, or other such document or entry as aforesaid, or any deed, bond, writing obligatory, assignment of a right to land, certificate of registration or affidavit of execution, or any memorial of any deed, will or other instrument, which may at the time this act takes effect or thereafter be registered by virtue of any statute in force in this province or any part thereof, or any acquittance or receipt either for money or for goods, or any accountable receipt either for money or goods, as for any note, bill or other security for payment of money, or any warrant, order or request for the delivery or transfer of goods, or for the delivery of any note, bill or other security for the payment of money, or any contract, promise or agreement, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than four years nor more than ten years." (*Ib.* s. 9.)

Falsely Personating Bail, &c.—"If any person knowingly and wilfully, before any court, judge or other person lawfully authorized to take any recognizance or bail, acknowledges any recognizance or bail in the name of any other person not privy or consenting to the same, whether such recognizance or bail in either case be or be not filed, or if any person in the name of any other person not privy or consenting to the same, acknowledges any *cognovit actionem* or judgment, or any deed to be registered or enrolled, every such offender shall be guilty of felony, and shall be confined in the penitentiary for any term not less than four years nor more than ten years." (*Ib.* s. 10.)

Possessing Forged Instruments.—"If any person without lawful excuse, the proof whereof shall lie upon the party

accused, purchases or receives from any other person, or has in his custody or possession, any forged bank-note or blank bank-note, knowing the same to be forged, such offender shall be guilty of felony, and shall be confined in the penitentiary for any term not less than two years nor more than seven years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 11.)

ENGRAVING OF BILLS, &c.—"If any person engraves or in any wise makes upon any plate whatever, or upon any wood, stone or other material, any bank-note, bill of exchange or promissory note for the payment of money, purporting to be the bank-note, bill or promissory note, or part of the bank-note, bill or promissory note of any person or persons, body corporate or company carrying on the business of bankers in this province, without the authority of such person or persons, body corporate or company, the proof of which shall lie on the party accused; or if any person engraves or makes upon any plate whatever, or upon any wood, stone or other material, any word or words resembling or apparently intended to resemble any subscription subjoined to any bank-note, bill of exchange or promissory note for the payment of money, issued by any such person or persons, body corporate or company carrying on the business of bankers, without such authority to be proved as aforesaid; or if any person without such authority, to be proved as aforesaid, uses, or without lawful excuse, to be proved by the party accused, knowingly has in his custody or possession any plate, wood, stone or other material upon which any such bank-note, bill of exchange or promissory note, or part thereof, or any word or words resembling or apparently intended to resemble such subscription, has been engraved or made; or if any person without such authority, to be proved as aforesaid, knowingly offers, utters, disposes of or puts off, or without lawful excuse, to be proved as aforesaid, knowingly has in his custody or possession, any paper upon which any part of such bank-note, bill of exchange or promissory note, or any word or words resembling or apparently intended to resemble any such subscription, has been made or printed, every such offender

shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years nor more than seven years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 12.)

Of Foreign Bills, &c.—"If any person forges or alters, or offers, utters, disposes of or puts off, knowing the same to be forged or altered, any bill of exchange, promissory note, undertaking or order for payment of money, in whatever language or languages the same may be expressed, and whether the same is or is not under seal, purporting to be the bill, note, undertaking or order of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate or body of the like nature constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of Her Majesty; or if any person engraves or in any wise makes upon any plate whatever, or upon any wood, stone or other material, any bill of exchange, promissory note, undertaking or order for payment of money, in whatever language or languages the same may be expressed, and whether the same is or is not intended to be under seal, purporting to be the bill, note, undertaking or order of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate or body of the like nature constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of Her Majesty, without the authority of such foreign prince or state, minister or officer, body corporate or body of the like nature, person or company of persons, the proof of which authority shall lie on the person accused; or if any person without such authority, to be proved as aforesaid, uses, or without lawful excuse, to be proved by the party accused, knowingly has in his custody or possession any plate, stone, wood or other material upon which any such foreign bill, note, undertaking or order, or any part thereof, has been engraved or made; or if any person without such authority, to be proved as aforesaid, knowingly utters, disposes of, or puts off, or without lawful excuse, to be proved as aforesaid, knowingly

has in his custody or possession any paper upon which any part of any such foreign bill, note, undertaking or order has been made or printed, every such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years nor more than seven years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 13.)

Of Passenger Tickets, &c.—"If any person knowingly forges or utters, knowing the same to be forged, any ticket or order for a free or paid passage on any railway, or on any steam or other vessel, with intent to defraud any other person, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for a period not exceeding three years nor less than two years." (*Ib.* s. 14.)

Of Postage Stamps, &c.—"If any person forges, counterfeits or imitates any postage stamp issued or used under the authority of the act respecting the Provincial Post Office, or by or under the authority of the government or proper authority of the United Kingdom, or of any British North American Province, or of any foreign country, or knowingly uses any such forged, counterfeit or imitated stamp, or engraves, cuts, sinks or makes any plate, die or other thing whereby to forge, counterfeit or imitate such stamp, or any part or portion thereof, except by the permission in writing of the Provincial Postmaster General, or of some officer or person who, under the regulations to be made in that behalf, may lawfully grant such permission, or has possession of any such plate, die or other thing, without such permission, or as aforesaid, forges, counterfeits or unlawfully imitates, uses or affixes to or upon any letter or packet, any stamp, signature, initials, or other mark or sign, purporting that such letter or packet ought to pass free of postage, or at a lower rate of postage, or that the postage thereon or any part thereof hath been pre-paid, or ought to be paid by or charged to any person, department or party whomsoever, such offender shall be guilty of felony, and be imprisoned in the penitentiary for life." (*Ib.* s. 15.)

5 ELIZ. c. 14.—"Every person convicted of any offence which was subjected by any act or acts to the same pains or penalties as are imposed by the act of Queen Elizabeth, intituled, *An Act against Forgers of False Deeds and Writings*, for any of the offences first enumerated in that act, shall be guilty of felony, and shall in lieu of such pains and penalties be confined in the penitentiary for any term not less than two years nor more than seven years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 16.)

FORGERIES ABROAD.—"Where the forging or altering any matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this act expressed to be an offence, if any person in this province forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any such writing or matter, in whatsoever place or country out of this province, whether under the dominion of Her Majesty or not, such writing or matters may purport to be made, or may have been made, and in whatever language or languages the same or any part thereof may be expressed, such person and every person aiding, abetting or counselling such person, shall be deemed an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in this province." (*Ib.* s. 17.)

"If any person in this province forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any endorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any deed, bond, writing obligatory for the payment of money (whether such deed, bond or writing obligatory has been made only for the payment of money or for the payment of money together with some other purpose) in whatever place or country out of this province, whether under the dominion of Her Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, deed, bond or writing obli-

gatory, may be or may purport to be payable, and in whatever language or languages the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant or order be or be not under seal, such person and every person aiding, abetting or counselling such person, shall be deemed an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in this province." (*Ib.* s. 18.)

Uttering, &c., Forged Instruments.—"When by any law in force in any part of this province any person falsely making, forging, counterfeiting, erasing or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting away or making use of any matter whatsoever, knowing the same to be falsely made, forged, counterfeited, erased or altered, or any person demanding, or endeavouring to receive or have any thing, or doing or causing to be done any act upon or by virtue of any matter whatsoever, knowing such matter to be falsely made, forged, counterfeited, erased or altered, or where by any law in force as aforesaid any person falsely personating another, or falsely acknowledging any thing in the name of another, or falsely representing any other person than the real party to be such party, or demanding or receiving any money or other thing by virtue of any probate or letters of administration, knowing the will on which such probate was obtained to have been false or forged, or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation, would be guilty of felony, and be liable to any other punishment than is provided by this act; then and in each of the several cases aforesaid, if any person is convicted of any such felony as hereinbefore mentioned, or of aiding, abetting, counselling or procuring the commission thereof, and no other provision is made for the punishment of any such offender under any other clause of this act, such offender shall be imprisoned in the penitentiary for any term not more than ten years nor less than two, or be imprisoned in any common gaol for any term less than two years; but nothing herein contained shall

affect or alter any law relating to any coin lawfully current in this province." (*Ib.* s. 19.)

OF TRADE-MARKS, &c.—"Any person who knowingly and wilfully, and with intent to deceive and defraud, forges or counterfeits, or causes or procures to be forged or counterfeited, any private mark, token, stamp or label of any manufacturer, mechanic or other person being a resident of this province, upon or with respect to any goods, wares or merchandize whatsoever, shall be guilty of felony, and shall be punished by imprisonment in the common gaol for a term at the discretion of the court, but less than two years." (*Ib.* s. 20.)

"Any person who vends any goods, wares or merchandize, having thereon any forged or counterfeited private mark, token, stamp or label, purporting to be the private mark, token, stamp or label of any other person, being a resident of this province, knowing the same at the time of the purchase thereof by him to be forged or counterfeited, shall be guilty of a misdemeanor, and shall be punished by imprisonment in the common gaol for a term not exceeding six months, or by a fine of not more than one hundred dollars, or by both, in the discretion of the court." (*Ib.* s. 21.)

TRIAL OF OFFENDERS AND ACCESSORIES.—"If any person commits any offence against this act, or commits any offence of forging or altering any matter whatsoever, or of offering, uttering, disposing of or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case be indictable at common law or by virtue of any statute, the offence of every such offender may be dealt with, indicted, tried and punished, and be laid and charged to have been committed in any district, county or place in which he has been apprehended, or may be in custody, as if his offence had been actually committed in that district, county or place; and every accessory before or after such offence, if the same be a felony, and every person aiding, abetting or counselling the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried and punished, and his offence

laid and charged to have been committed in any district, county or place in which the principal offender may be tried." (*Ib.* s. 22.)

"In the case of every felony punishable under this act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree; and every accessory after the fact to any felony punishable under this act shall, on conviction, be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 23.)

"In all informations or indictments for forging, altering, or in any manner uttering any instrument or writing, it shall not be necessary to set forth any copy or *fac simile* thereof, but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing the same." (*Ib.* s. 24.)

"When the having any matter in the custody or possession of any person is in this act expressed to be an offence, if any person has any such matter in his personal custody or possession, or knowingly or wilfully has any such matter in any dwelling-house or other building, lodging, apartment, field or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether such matter is for his own use or for the use or benefit of another, every such person shall be deemed to have such matter in his custody or possession within the meaning of this act; and where the committing of any offence with intent to defraud any person whatsoever is made punishable by this act, in every such case the word 'person' shall throughout this act be deemed to include Her Majesty or any foreign prince or state, or any body corporate, or any company or society of persons not incorporated, or any person or number of persons whatsoever who may be intended to be defrauded by such offence, whether such body corporate, society, person or number of persons reside or carry on business in this province or elsewhere, and whether under the dominion of Her Majesty or not; and it shall be sufficient in any indictment to name one person only of such company, society or number or persons, and to allege the offence to have been committed with intent

to defraud the person so named and another or others, as the case may be." (*Ib.* s. 25.)

"In all prosecutions by indictment or information against any person or persons for any offence punishable under this act, no person shall be deemed an incompetent witness in support of the prosecution by reason of any interest which such person may have or be supposed to have in respect of any deed, writing, instrument or other matter given in evidence on the trial of such indictment or information; But the evidence of any person or persons so interested, or supposed to be interested, shall in no case be deemed sufficient to sustain a conviction for any of the said offences, unless the same is corroborated by other legal evidence in support of such prosecution." (*Ib.* s. 26.)

"If any person who, before the first of January, one thousand eight hundred and forty-eight, having committed any offence against any act repealed by the statute 10, 11 Vic. c. 9, relating to forgery, or thereby declared to be no longer in force, has been convicted of the same since the said first of January, one thousand eight hundred and forty-eight, or after this act takes effect be convicted of the same, and if such offence was punishable with death, in every such case the person convicted of such offence shall not suffer the punishment of death, but shall in lieu thereof be confined in the penitentiary for any term not less than two nor more than ten years, or be imprisoned in any common gaol for any term less than two years." (*Ib.* s. 27.)

Of Certain Documents, &c.—"Any person who forges any seal, stamp or signature of any document mentioned or referred to in the act respecting witnesses and evidence, or who tenders in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, is guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding ten years, or be imprisoned in any common gaol or house of correction with hard labor for any term not exceeding one year nor less than two months." (Con. Stat. U. C. c. 101, s. 1.)

"Whenever any such document has been admitted in evidence, the court or the person who has admitted the same may, at the request of any party against whom the same has been admitted in evidence, direct that the same shall be impounded and be kept in the custody of some officer of the court or other proper person, for such period and subject to such conditions as to the said court or person seems meet." (*Ib.* s. 2.)

Of Seals of Division Courts.—"Any person who forges the seal or any process of any division court, or serves or enforces any such forged process, knowing the same to be forged, or who delivers, or causes to be delivered to any person, any paper falsely purporting to be a copy of any summons or other process of any such court, knowing the same to be false, or who acts or professes to act under any false color or pretence of the process of any such court, is guilty of felony." (*Ib.* s. 3.)

Of Signatures to Affidavits.—"Any person who forges any signature to any affidavit made or taken under the Common Law Procedure Act, or who uses or tenders in evidence any such affidavit with any false, forged or counterfeited signature thereto, knowing the same to be false, forged or counterfeit, is guilty of felony, and shall be imprisoned at hard labor in the penitentiary for any term not more than ten years nor less than four years." (*Ib.* s. 4.)

Of Debentures, &c.—"Any person who forges or counterfeits any debenture issued under the authority of any act providing for the accommodation of the superior courts, or any stamp, endorsement or writing thereon or therein, or who demands to have such counterfeited debenture, or any debenture with such counterfeited writing or other endorsement thereon or therein, exchanged for money by any person, liable or required to exchange the same, or by any other person, knowing the debenture so tendered, or the endorsement or writing thereon or therein to be so forged or counterfeited, with intent to defraud Her Majesty or the person appointed to pay the same, or any other person or persons, body or bodies politic, or corporate, is guilty of felony, and shall suffer such punish-

ment as may be adjudged in that behalf, not exceeding imprisonment in the penitentiary for seven years." (*Ib.* s. 5.)

OF CERTIFICATES IN RESERVED CASES.—"Any person who forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any certificate, or copy, certified under the act respecting the reservation of points of law in criminal cases, tried at any assizes, quarter sessions, or recorder's court, by a chief justice or senior judge, or by a clerk of assize, clerk of the peace or recorder's clerk, with intent to cause any person to be discharged from custody, or otherwise to prevent the course of justice, is guilty of felony, and shall be imprisoned in the penitentiary for any period not more than seven nor less than three years." (*Ib.* s. 6.)

VENUE.—"Every person charged with committing any felony under this act may be dealt with, indicted, tried, and, if convicted, be sentenced, and the offence may be laid and charged to have been committed in the county or place in which he may be apprehended or is in custody." (*Ib.* s. 7.)

ACCESSORIES.—"Every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in any county or place in which the principal offender may be tried." (*Ib.* s. 8.)

OF RAILWAY DEBENTURES, &C.—"The offence of forging any debentures, or a coupon of any debenture, issued under the authority of this act, or of the special act, or of uttering any such debenture or coupon, or of being accessory before or after the fact to any such offence, shall be deemed felony, and be punished accordingly." (Con. Stat. C. c. 66, s. 121.)

OF SEALS, &C., OF SURROGATE COURTS.—"If any person forges the signature of any judge or registrar of a surrogate court, or of any commissioner for taking affidavits as aforesaid, or forges or counterfeits any seal of a surrogate court, or knowingly uses or concurs in using any such forged or counterfeit signature or seal, or tenders in evidence any document with a false or counterfeit signature of such judge, registrar or commissioner, or with a false or counterfeit seal, knowing the same signature or

seal to be false or counterfeit, such person shall be guilty of felony, and liable to be imprisoned in the provincial penitentiary for any term not exceeding seven years." (Con. Stat. U. C. c. 16, s. 16.)

OF CERTIFICATES, &c., REQUIRED BY CUSTOMS ACT.—"If any person counterfeits or falsifies, or uses when so counterfeited or falsified, any paper or document required under this act, or for any purpose therein mentioned, whether written, printed or otherwise, or by any false statement procures such document; or forges or counterfeits any certificate relating to any oath or affirmation hereby required or authorized, knowing them to be forged or counterfeited, such person shall be guilty of a misdemeanor, and being thereof convicted, shall be liable to be punished accordingly." (Con. Stat. C. c. 17, s. 68.)

(As to forgery of post office stamps, &c., see "Post Office," *post.*)

OF PAWNBROKERS' NOTES.—"If any person counterfeits, forges, or alters any note or memorandum given by a pawnbroker for goods pledged, or causes or procures the same to be done, or utters, vends, or sells such note or memorandum, knowing the same to be counterfeited, forged or altered, with intent to defraud any person, such offender shall be punished as hereinafter mentioned." (*Ib.* c. 61, s. 24.)

PERSONS SUSPECTED OF FORGING HOW DEALT WITH.—"In case any note or memorandum aforesaid is uttered, shewn or offered to any person, and such person has reason to suspect that the same has been forged, he may seize the person offering the same and deliver him to a bailiff or constable, who shall convey him before some Justice of the place where the offence has been committed, or nearest thereto; and if upon examination it appears to the satisfaction of such Justice that such person is guilty, he shall commit him to the common gaol of the district or county for any time not exceeding three months."* (*Ib.* s. 25.)

* WHAT IS FORGERY?—Forgery is the fraudulent making or altering a written instrument, *to the detriment of another.* It is a felony for which the punishment is imprisonment in the provincial penitentiary for any period not less than two

GAOLS, &c.

The conduct, management, discipline and police of the provincial penitentiary, and the inspection and regulation of all the gaols in the province, are committed to the five Inspectors of gaols, who at their meetings constitute a board. (See Con. Stat. C. c. 110.)

GAOLS AND COURT HOUSES.—"Every county council may pass by-laws for erecting, improving and repairing a court house, gaol, house of correction and house of industry, upon land being the property of the municipality, and shall preserve and keep the same in repair, and provide the food, fuel, and other supplies required for the same." (Con. Stat. U. C. c. 54, s. 403.)

"The gaol, court house and house of correction of the county in which a town or city, not separated for all purposes from a county, is situate, shall also be the gaol, court house and house

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years, or in any common gaol for any term less than two years. No kind of forgery is now punishable with death. (Con. Stat. C. c. 94, s. 4.)

To constitute a forgery it is not necessary the *whole* instrument should be fictitious. Making a fraudulent insertion, alteration, or erasure, in any material part of a true document, by which another may be defrauded: the fraudulent application of a false signature to a true instrument, or a real signature to a false one; and the alterations of the date of a bill after acceptance, by which its payment may be accelerated, are forgeries.

If a note be made payable at a banker's, and he fails, it is a forgery to introduce a piece of paper over the name of the banker who has failed, containing the name of another banking house; expunging an endorsement on a bank note with a liquor unknown is held to be an erasure within the statute.

The essence of forgery is an intent to defraud another; and therefore the mere imitation of another's writing, the assumption of a name, or the alteration of a written instrument, where no person can be injured, does not come within the definition of the offence. Neither does the using of a fictitious name, though for the purpose of concealment and fraud, amount to forgery, unless it were for that precise species of fraud of which the forgery forms a part.

Whether the fraud be effected on the party to whom the instrument is addressed, or whose writing is counterfeited, or upon a third person, who takes it upon the credit it assumes, is immaterial; nor is it of consequence whether the counterfeited instrument be such as if real would be effectual to the purpose it intends, so long as there is sufficient resemblance to impose upon those to whom it is altered. Thus the fabrication of an order for the payment of a sailor's prize money is forgery, though it be invalid as wanting the requisites required by law.

Lastly, to complete the offence, the instrument forged should be parted with, or tendered, or offered, or used in some way, to get money or credit upon it. Delivering a box containing among other things forged stamps to the party's own servant to be forwarded by a carrier to a customer in the country, is an uttering within the statute. But merely shewing a man an instrument, the uttering of which would be criminal, is not an uttering.

of correction of the town or city; and shall in the case of such a city continue to be so until the council of the city otherwise directs; and the sheriff, gaoler and keeper of the gaol and house of correction shall receive and safely keep until duly discharged all persons committed thereto by any competent authority of the town or city." (*Ib.* s. 404.)

"While a city or town uses the court house, gaol or house of correction of the county, the city or town shall pay to the county such compensation therefor, and for the care and maintenance of prisoners, as may be mutually agreed upon or be settled by arbitration under this act." (*Ib.* s. 405.)

"In case after the lapse of five years from such compensation having been so agreed upon or awarded, or having been settled by act of parliament, and whether before or after the passing of this act, it appears reasonable to the Governor in council, upon the application of either party, that the amount of the compensation should be reconsidered, he may by an order in council direct that the then existing arrangement shall cease after a time named in the order, and after such time the councils shall settle anew by agreement or by arbitration under this act the amount to be paid from the time so named in the order." (*Ib.* s. 406.)

"The council of every city may erect, preserve, improve and provide for the proper keeping of a court house, gaol, house of correction and house of industry upon lands being the property of the municipality, and may pass by-laws for all or any of such purposes." (*Ib.* s. 407.)

"In case of a separation of a union of counties, all rules and regulations, and all matters and things in any act of parliament for the regulation of or relating to court houses or gaols in force at the time of the separation, shall extend to the court house and gaol of the junior county." (*Ib.* s. 408.)

Lock-up-Houses.—"The council of every county may establish a lock-up-house or lock-up-houses within the county, and may establish and provide for the salary or fees to be paid to the constable to be placed in charge of every such lock-up-house, and may direct the payment of the salary out of the funds of the county." (*Ib.* s. 409.)

"Every lock-up-house shall be placed in the charge of a constable, specially appointed for that purpose by the magistrates of the county at any General Quarter Sessions of the peace therefor." (*Ib.* s. 410.)

"Any Justice of the Peace of the county may direct by warrant in writing under his hand and seal the confinement in a lock-up-house within his county, for a period not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined and either dismissed or fully committed for trial to the common gaol, and until such person can be conveyed to such gaol; also the confinement in such lock-up-house, not exceeding twenty-four hours, of any person found in a public street or highway in a state of intoxication, or any person convicted of desecrating the Sabbath, and generally may commit to a lock-up-house instead of to the common gaol or other house of correction, any person convicted on view of the Justice, or summarily convicted before any Justice or Justices of the Peace of any offence cognizable by him or them, and liable to imprisonment therefor under any statute or municipal by-law." (*Ib.* s. 411.)

"The expense of conveying any prisoner to, and of keeping him in a lock-up-house shall be defrayed in the same manner as the expense of conveying him to and keeping him in the common gaol of the county." (*Ib.* s. 412.)

"The council of every city, town and incorporated village may, by by-laws, establish, maintain and regulate lock-up-houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any by-law of the council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any common gaol or house of correction either for trial or in the execution of any sentence." (*Ib.* s. 414.)

Houses of Industry and Refuge.—"The council of every county may establish a house of industry and house of refuge, and provide by by-law for the erection and repair thereof, and for the appointment and duties of inspectors, keepers, matrons and other servants for the superintendence, care and manage-

ment of such house of industry or of refuge, and in like mnaner make rules and regulations (not repugnant to law) for the government of the same." (*Ib.* s. 415.)

"Any two of Her Majesty's Justices of the Peace, or of the inspectors appointed as aforesaid, may, by writing under their hands and seals commit to the house of industry or of refuge, to be employed and governed according to the rules, regulations and orders of the house:

1. "All poor and indigent persons who are incapable of supporting themselves;

2. "All persons without means of maintaining themselves, and able of body to work and who refuse or neglect so to do;

3. "All persons leading a lewd, dissolute, or vagrant life, and exercising no ordinary calling or lawful business sufficient to gain or procure an honest living;

4. "And all such as spend their time and property in public houses, to the neglect of any lawful calling;

5. "And idiots." (*Ib.* s. 416.)

"Every person committed to the house of industry or of refuge, if fit and able, shall be kept diligently employed at labour during his continuance there; and in case any such person is idle and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient or disorderly, such person shall be punished according to the rules and regulations of the house of industry or of refuge in that behalf." (*Ib.* s. 417.)

WORK-HOUSES.—"The council of every city and town may respectively pass by-laws:

1. "For erecting and establishing within the city or town, or on such industrial farm, or on any ground held by the corporation for public exhibitions, a work-house, or house of correction, and for regulating the government thereof;

2. "For committing or sending, with or without hard labour, to the work-house or house of correction, or to the industrial farm, by the mayor, recorder, police magistrate, or two Justices of the Peace for the city or town respectively, such description of persons as may by the council be deemed, and by

by-law be declared expedient; and such farm or ground held as aforesaid shall for the purposes in this sub-section mentioned, be deemed to be within the city or town and the jurisdiction thereof." (*Ib.* s. 419.)

CUSTODY.—"The sheriff shall have the care of the county gaol, gaol offices and yard, and gaoler's apartments, and the appointment of the keepers thereof." (*Ib.* s. 420.)

"The county council shall have the care of the court-house and of all offices and rooms connected therewith, whether the same forms a separate building or is connected with the gaol, and shall have the appointment of the keepers thereof; and shall from time to time provide all necessary and proper accommodation for the courts of justice other than the division courts, and for all officers connected with such courts." (*Ib.* s. 421.)

"In any city not being a separate county for all purposes, but having a gaol or court-house separate from the county gaol or court-house, the care of such city gaol or court-house shall be regulated by the by-laws of the city council." (*Ib.* s. 422.)

GAMING.

Gaming or speculating on the chance of winning or losing money by any play, game or diversion, is an offence not punishable at common law, unless it is so practised as to be injurious to the public economy; but the Legislature has passed the following act, prohibiting the disposal of any property by lotteries or any mode of chance.

PENALTY FOR MAKING LOTTERIES.—"If any person makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan, for advancing, lending, giving, selling, or in any way disposing of any property, either real or personal, by lots, cards, tickets, or any mode of chance whatever, or sells, barters, exchanges, or otherwise disposes of, or causes or procures, or aids, or assists in the sale, barter, exchange or other disposal of, or offers for

sale, barter or exchange, any lot, card, ticket, or other means or device, for advancing, lending, giving, selling, or otherwise disposing of any property, real or personal, by lots, tickets, or any mode of chance whatever, such person shall, upon conviction thereof, before any mayor, alderman, or other Justice of the Peace, upon the oath of any one or more credible witnesses, or upon confession thereof, forfeit the sum of twenty dollars for each and every such offence, together with costs, to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of any such mayor, alderman, or other Justice of the Peace, of the city, town, county or place where such offence has been committed, which said forfeiture shall be applied half to the informer, and the other half shall be paid to the treasurer or chamberlain of the municipality in which such offence was committed, and shall form part of the funds thereof." (Consol. Stat. C. c. 95, s. 1.)

BUYING TICKETS, &c.—"Any person buying, bartering, exchanging, taking or receiving any such lot, card, ticket, or other device as in the first section of this act mentioned, shall, upon conviction thereof, in like manner as therein mentioned, forfeit the sum of twenty dollars for each offence, to be recovered and applied as aforesaid." (*Ib.* s. 2.)

SALES, &c., VOID.—"Any sale, loan, gift, barter or exchange of any real or personal property, by any lottery, ticket, card, or other mode of chance whatever, depending upon, or to be determined by chance or lot, shall be void to all intents and purposes whatsoever; and all such real or personal property so sold, lent, given, bartered or exchanged, shall be forfeited to such person as will sue for the same by action or information in any court of record in this province." (*Ib.* s. 3.)

PURCHASER WITHOUT NOTICE.—"No such forfeiture shall affect any right or title to such real or personal property acquired by any *bonâ fide* purchaser for valuable consideration without notice." (*Ib.* s. 4.)

COMMITTAL FOR NON-PAYMENT OF PENALTIES.—"If any person so convicted as aforesaid has not sufficient goods and chattels

whereon to levy the penalties authorized by this act, or does not immediately pay the said penalties, or give security for the same, such mayor, alderman, or other Justice, convicting such person, shall commit him to the common gaol of the county or district in which the offence was committed for a period not exceeding three months, unless such fine and costs be sooner paid." (*Ib.* s. 5.)

FOREIGN LOTTERIES.—"The provisions of this act shall extend to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and to the sale, or offer for sale, of any ticket, chance, or share, in any such lottery, or to the advertisement for sale of such ticket, chance, or share." (*Ib.* s. 6.)

INTERPRETATION.—"The term 'personal property' in this act shall include every description of money, chattel and valuable security, and every kind of personal property whatever; and the term 'real property' shall include every description of land, and all estates and interest therein." (*Ib.* s. 7.)

APPEALS.—"Any person convicted under this act shall have the same right of appeal from the judgment of the convicting Justice, as in other cases of summary convictions, where an appeal is allowed by law." (*Ib.* s. 8.)

DIVISION OF PROPERTY IN COMMON.—"Nothing in this act contained shall prevent joint tenants, or tenants in common, or persons having joint interests, *droits indivis*, in any real or personal property, from dividing such property by lot or chance, in the same manner as if this act had not been passed." (*Ib.* s. 9.)

BY-LAWS AGAINST GAMING.—"The Council of every county, city and town, may pass by-laws for suppressing gambling-houses, and for seizing and destroying faro-banks, rouge-et-noir, roulette tables, and other devices for gambling found therein." (Con. Stat. U. C. c. 54, p. 282.)

GENERAL QUARTER SESSIONS.

THE COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.—This court is held four times a year in each county and provisional judicial district in Upper Canada, under the authority of the commission of the peace issued by the Crown, and various acts of Parliament. Its sittings begin upon the second Tuesday in the months of March, June, September and December in each year, and are held at the county town of the county or judicial district. The act (20 Vic. c. 58) which provides the time when the court is to be holden is only directory, and therefore the court may be holden on any other day in the quarter.

SUMMONSING THE COURT OF QUARTER SESSIONS.—Any two or more of the Justices of the county or counties can summon this court by issuing and delivering to the sheriff, at least sixteen days before the day fixed on for the sitting, the following

PRECEPT.

CANADA, district (*or county, united counties, or as the case may be*) of ——, to wit:

We, —— and ——, two of Her Majesty's Justices assigned to keep the Peace, in and for the district (*or county, or as the case may be*) of ——, and also to hear and determine divers felonies, trespasses and other misdeeds committed in the said district (*or county, or as the case may be*)

To the sheriff of the district (*or county, or as the case may be*) of ——, GREETING:

On behalf of our Sovereign Lady the Queen, WE COMMAND YOU, that you do not omit by reason of any liberty in your district (*or county, or as the case may be*), but that you cause to come before us and other our fellow Justices assigned to keep the Peace in and for the said district (*or county, or as the case may be*), and also to hear and determine divers felonies, trespasses and other misdeeds committed in the said district (*or county, or as the case may be*), on —— next, at ten of the clock in the forenoon, at the court house in ——, —— good and lawful men of your district (*or county, or as the case may be*) to enquire, present, do and perform, all and singular such things which on the part of our said Lady the Queen may be then and there enjoined them.

Make known also to all Justices of the Peace of our said Lady the Queen, within the said district (*or county, or as the case may be*), that they be then and there, with their rolls, records and other memoranda, to do those things which in that behalf belong to their several offices to be done; and have you then and there the names of the said jurors and this precept.

Given under our hands and seals, this —— day of ——, in the —— year of Her Majesty's reign.

J. S. [L. S.]
O. K. [L. S.]

Upon receipt of this precept the sheriff gives notice that he will upon a certain day and hour attend at the office of the Clerk of the Peace to draft a panel of jurors. At the time so fixed at least two Justices of the county must be present and witness the drafting of the panel by ballot.

FORMER COMMISSIONS AND COURTS CONFIRMED.—"The authority under which Commissions of the Peace have been issued and the authority under which the courts of General Quarter Sessions of the Peace have been holden, and are now held in Upper Canada, and all matters and things done by, or by virtue of the same, shall be, so far as relates to the authority under which such commissions were issued and such courts have been holden, good and valid." (Con. Stat. U. C. c. 17, s. 1.)

OUTLAWRY.—"The courts of general quarter sessions of the peace in the several counties of Upper Canada shall be in the place and stead of the county courts of England, as far as respects any purpose of outlawry, or any proceedings therein." (*Ib.* s. 2.)

WHEN TO BE HELD.—"The courts of general quarter sessions of the peace in and for the several counties, shall be held on the second Tuesday in the months of March, June, September and December in each year." (*Ib.* s. 3.)

WHERE TO BE HELD.—"The court of general quarter sessions of the peace shall be held in the county town of the county; but in time of war or other exigency the Governor may, by proclamation under the great seal, authorize the holding the court at some other place in the county." (*Ib.* s. 4.)

CHAIRMAN. —"The judge of the county court of every county, and in case of his death or absence the junior or the deputy judge (as the case may be), officiating in the office of county court judge, shall preside as chairman at the general quarter sessions of the peace for the county; but in case of the absence from sickness or other unavoidable cause of the judge of the county court, and of the junior and the deputy judge thereof, if such there be, the Justices present shall elect another chairman *pro tempore*." (*Ib.* s. 5.)

RESCINDING ORDERS OF COURT.—"Whenever an order has been passed or recorded by any number of magistrates in any county in Upper Canada the same shall not be rescinded, unless at least the same number be present."* (*Ib.* s. 6.)

JURISDICTION OF COURT.—"All powers and jurisdiction to try treasons and felonies, for conviction whereof the punishment of death is imposed, and which powers and jurisdiction are by any law or statute whatsoever granted or confirmed, or which are in any other manner vested in or exercised by any court of quarter sessions and recorder's court of this province, are hereby absolutely revoked and determined, and every such law and statute is hereby repealed, so far as it may confer such powers and jurisdictions." (24 Vic. c. 14, s. 1.)

As to the appointment of constables, see article "Constable," *ante*, p. 185.

AUDIT OF COUNTY EXPENSES.—"All accounts and demands preferred by any person against the county, the approving and auditing of which belongs to the court of quarter sessions, shall be delivered to the clerk of the peace, on or before the first day of the session in each term, to be laid before the bench."† (Con. Stat. U. C. c. 121, s. 1.)

"No accounts shall be passed or audited at any court of quarter sessions in any county of Upper Canada, unless at least seven magistrates be present, and whose names shall be entered on the record." (*Ib.* s. 2.)

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* The clerk of the peace should be careful and keep a correct record of all the Justices present at the adjourned or special sessions.

It frequently occurs that the orders respecting the boundaries of division courts and other matters require to be rescinded and new orders made. Justices should not attempt to revoke an order till they have satisfactory evidence that they have present a greater number than were present when it was made.

† It is frequently the case that accounts preferred by constables are deferred and caused to be returned, because the Justice under the authority of whom he acted has not put upon the account the necessary certificate as to the fact, that the defendant has been sent to prison because goods could not be found, or as to some other fact; and therefore the Justice who administers to the constable the oath as to the correctness of the account should see that it has the necessary certificate before it is sworn to.

"The court shall take the accounts into consideration on the second day of each session, and dispose of the same as soon as practicable; and all orders or checks signed by the chairman of the quarter sessions, except for the payment of constables or services rendered during the sitting of the court, shall express the act of parliament, if any, under which the expenditure is authorized." (*Ib.* s. 3.)

"At the adjournment of each court of quarter sessions the clerk of the peace shall furnish the treasurer with a list of the orders passed during such session, according to their priority; and the treasurer shall pay such orders according to the respective dates and numbers in which the same were passed at the said session; but all sums necessary to defray the expenses of the custody and maintenance of prisoners, and the accounts of public officers, and officers of the court, shall be first paid." (*Ib.* s. 4.)

"Except for debts actually due by a county, the magistrates for such county shall not order or direct the payment of any sum of money by the treasurer of such county, unless it appears by the treasurer's accounts that there are sufficient funds in his hands to meet the payment of such order; and if any such order be made contrary to the provisions hereof, the person or persons in whose favor such order has been made may recover the same against the magistrates who sanctioned such order, in an action to be brought for that purpose, as for so much money had and received to the plaintiff's use and benefit." (*Ib.* s. 5.)

GAME LAWS—OFFENCES AGAINST.

KILLING DEER, &c.—"No deer, or fawn, elk, moose, or cariboo, shall be hunted, taken or killed, between the first day of January and the first day of September in each year." (23 Vic. c. 55, s. 2.)

TURKEYS, GROUSE, &c.—"No wild turkey, grouse, partridge, or pheasant, shall be hunted, taken or killed, between the first day of February and the first day of September in any year." (*Ib.* s. 3.)

QUAIL.—"No quail shall be taken or killed between the first day of February and the first day of October in each year." (*Ib.* s. 4.)

"No woodcock shall be taken or killed between the first day of March and the sixteenth day of July in each year." (*Ib.* s. 5.)

"No wild swan, goose, duck, widgeon, or teal, shall be hunted, taken or killed, between the first day of April and the first day of August in any year." (*Ib.* s. 6.)

TRAPPING WILD FOWL.—"No wild turkey, grouse, partridge or pheasant, quail or woodcock, shall be trapped, or taken by means of traps, nets, snares, springs, or other means of taking such birds, other than by shooting, at any time whatever; nor shall any trap, net or snare, be made, erected or set, either wholly or in part, for the purpose of such trapping or taking." (*Ib.* s. 7.)

TRAPPING DEER.—"No deer shall be trapped, or taken by means of traps or snares, at any time whatever; nor shall any traps be set or erected for the purpose of such trapping or taking." (*Ib.* s. 8.)

HAVING GAME IN POSSESSION DURING THE CLOSE SEASON.—"No person or persons shall have in their possession any of the animals, or their hides, or any of the birds hereinbefore mentioned, within the periods above respectively prohibited, without lawful excuse, the proof whereof to be on the party charged; nor shall any sale of any of the game mentioned in this act take place, save within fourteen days from the termination of the several periods hereinbefore respectively fixed for the killing thereof, nor shall any possession for the purpose of sale be deemed lawful save within such period of fourteen days." (*Ib.* s. 9.)

EGGS NOT TO BE TAKEN.—"No eggs of any kind of the birds above enumerated, and hereby declared to be game, shall be wantonly destroyed at any time." (*Ib.* s. 10.)

PUNISHMENT OF OFFENCES AGAINST THIS ACT.—"Every offence against any provision of this act shall be punished summarily on information and conviction before a Justice of the Peace, by a fine not exceeding fifty dollars nor less than five dollars, in the discretion of such Justice, with costs, or in default of payment by imprisonment in a common gaol for a term not exceeding two months, or by imprisonment in any common gaol for a period not exceeding three months, without fine; one half of the fine to go to the municipality, and the other half to the informer." (*Ib.* s. 11.)

OF GAME CONFISCATED.—"In all cases confiscation of the game shall follow on conviction, and the game so confiscated shall be given to some charitable institution or institutions, at the discretion of the convicting justice." (*Ib.* s. 12.)

TRAPS, &C., MAY BE DESTROYED.—"Any person may destroy traps, nets or snares, set or erected, either wholly or in part in contravention of any provision of this act." (*Ib.* s. 13.)

BEAVER, MUSK-RATS, &C.—"No beaver, musk-rat, mink, sable, otter or fisher, shall be trapped, hunted, taken or killed, nor shall any trap or snare be laid for the same or any of them, between the first day of May and the first day of November, in any year; and all persons violating this section of this act shall be liable to the same proceedings and penalties, to be enforced and recovered in the same way, as are above declared with respect to game." (*Ib.* s. 14.)

DESTRUCTION OF INSECTIVOROUS BIRDS.—"The destruction of insectivorous birds being prejudicial to agriculture, and the killing and capturing of singing and other birds being a useless and cruel practice, the following statute has been enacted in that behalf:

"It shall not be lawful to shoot, destroy, kill, wound or injure any bird whatsoever, save and except eagles, falcons, hawks, and other birds of the eagle kind, wild pigeons, rice birds, kingfishers, crows and ravens, between the first day of March and the first day of August, in each year." (27 & 28 Vic. c. 52, s. 1.)

"It shall not be lawful to take, capture, buy, sell, expose for sale, or have in possession, any bird whatsoever, save the kinds above excepted, or to set, either wholly or in part, any net, trap, spring, snare, cage, or other machine or engine, by which any bird whatsoever, save the kinds above excepted, might be killed or captured, between the first day of March and the first day of August in any year." (*Ib.* s. 2.)

"It shall not be lawful to take, injure, destroy, or have in possession, any nest, young or egg, of any bird whatsoever, except those of eagles, falcons, hawks, and other birds of the eagle kind, and kingfishers, between the first day of March and the first day of August, in any year." (*Ib.* s. 3.)

"Provided always, that this act shall not apply to any imported birds, or to any domesticated bird or birds commonly known as poultry; nor shall it be unlawful to buy, sell, expose for sale or possess, any bird taken or captured at a season not forbidden by this act; but the proof that such bird was so taken or captured shall lie wholly on the party accused, whose oath alone shall suffice as such proof." (*Ib.* s. 4.)

"The violation of any provision of this act shall subject the offender to the payment of a penalty of not less than one dollar, and not more than ten dollars, to be recovered in a summary manner by summons before one Justice of the Peace of the district in which the offence is committed, who shall award the penalty the offender may be condemned to pay to the prosecutor, with all fees and costs incurred; and in default of immediate payment thereof, the offender shall at once be imprisoned in the nearest common gaol for a period of not less than two and not more than twenty days, at the discretion of such Justice of the Peace." (*Ib.* s. 5.)

"Any person may seize on view any bird unlawfully possessed, and carry the same before a Justice of the Peace, to be by him confiscated; and it shall be the duty of all market clerks and police officers on the spot to seize and confiscate, and, if alive, to liberate such birds; and every person is authorised to destroy all nets, traps, snares, cages, or other machines or engines, set wholly or in part, whereby any kind of bird

whatsoever, save the kinds above excepted in the first and fourth sections of this act, might be unlawfully killed or captured." (*Ib.* s. 6.)

"The Minister of Agriculture, and all persons authorised by him to that effect, may grant written permission to any person or persons who may be desirous of obtaining birds or eggs for *bonâ fide* scientific purposes, to procure them for that purpose during the close seasons, and such person or persons shall not be liable to any penalty under this act." (*Ib.* s. 7.)

"No conviction shall be annulled or vacated for any defect in the form thereof, or for any omission or informality in any summons or other proceeding under this act, so long as no substantial injustice results therefrom." (*Ib.* s. 8.)

"The present act, and all its provisions, shall be so construed as not to amend or vacate any provision of the Game Acts of Canada, or any amendments thereto." (*Ib.* s. 9.)

HARBOURS, &c.

"The council of every city, town, and incorporated village may respectively pass by-laws for the following purposes:

1. "For regulating or preventing the encumbering, injuring, or fouling, by animals, vehicles, vessels, or other means, of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water;

2. "For directing the removal of door-steps, porches, railings, or other erections or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water, or the banks or shores thereof, at the expense of the proprietor or occupant of the property connected with which such projections are found;

3. "For making, opening, preserving, altering, improving, and maintaining public wharves, docks, slips, shores, bays, harbours, rivers, or waters, and the banks thereof;

4. "For regulating harbours; for preventing the filling up or encumbering thereof; for erecting and maintaining the necessary beacons, and for erecting and renting wharves, piers,

and docks therein, and also floating elevators, derricks, cranes, and other machinery suitable for loading, discharging, or repairing vessels; for regulating the vessels, crafts, and rafts arriving in any harbour; and for imposing and collecting such reasonable harbour-dues thereon as may serve to keep the harbour in good order and to pay a harbour-master."

HARD LABOUR.

Hard labour cannot be imposed except the statute creating the offence expressly authorizes it. In offences for which hard labour may be imposed the commitment need not expressly negative the hard labour, it being presumed that it is not ordered unless stated. A conviction adjudging imprisonment and hard labour in default of sufficient distress is bad, and can be quashed, unless specially imposed and ordered by the statute.

SENTENCE TO THE PENITENTIARY TO INCLUDE HARD LABOUR.—"The sentence of any person to be imprisoned in the provincial penitentiary shall (whether expressed or not) include hard labour." (Con. Stat. C. c. 99, s. 102.)

THE COURT MAY ORDER HARD LABOUR OR SOLITARY CONFINEMENT AS PART OF THE SENTENCE OF IMPRISONMENT.—"When a person has been convicted of an offence for which imprisonment other than in the penitentiary may be awarded, the court may sentence the offender to be imprisoned and kept to hard labour in the common gaol or house of correction, and may also direct that the offender shall be kept in solitary confinement for a portion or for portions of the term of such imprisonment, not exceeding one month at any one time, and not exceeding three months in any one year." (*Ib.* s. 110.)

MAY BE IMPOSED BY JUSTICES.—In convictions under the act against cruelty to animals, malicious injury to property, selling or disposing of spirituous liquors between the hours of seven on Saturday evening and eight on Monday morning, hard labour may be imposed by the convicting Justices. Every municipal council may pass by-laws for inflicting reasonable punishment by imprisonment, with or without hard

labour, either in a lock-up-house in some town or village in the township, or in the county gaol or house of correction, for any period not exceeding twenty-one days, for breach of any of the by-laws, where no distress can be found. (See Con. Stat. U. C. c. 54, s. 243, sub. s. 8.)

HIGHWAYS—OFFENCES RELATING TO.

WHAT A HIGHWAY IS.—A highway is a common way, over which every person has an equal right of thoroughfare, and this whether it be only a foot-way or a cart-way. A way to a locality which is only for the particular inhabitants of such locality is a private way only, and not a highway.

"All allowances for roads made by the crown surveyor in any town, township or place already laid out, or hereafter laid out, and also all roads laid out by virtue of any act of the parliament of Upper Canada, or any roads whereon the public money has been expended for opening the same, or whereon the statute labour hath been usually performed, or any roads passing through the Indian lands, shall be deemed common and public highways, unless where such roads have been already altered according to law." (Con. Stat. U. C. c. 54, s. 313.)

USE OF PUBLIC ROADS IN CITIES AND TOWNS.—"The right to use as public highway all roads, streets and public highways within the limits of any city or incorporated town, (except in so far as the right of property or other right in the land occupied by such highways has been expressly reserved by some private party when first used as such roads, streets or highways, and except as to any concession road or side road within the city or town where the persons now in possession, or those under whom they claim, have laid out streets in such city or town without any compensation therefor in lieu of such concession or side road)." (Con. Stat. C. c. 85, s. 1.)

THE CORPORATION TO REPAIR, &c.—"Such roads, streets and highways, so long as they remain open as such, shall be maintained and kept in proper repair by and at the cost of such

corporation, whether they were originally opened and made by such corporation, or by the government of this province, or of either of the late provinces of Upper or Lower Canada, or by any other authority or party." (*Ib.* s. 2.)

NEGLECT.—"If the municipal corporation of any such city or incorporated town fail to keep in repair any such road, street or highway within the limits thereof, such default shall be a misdemeanor, for which such corporation shall be punished by fine in the discretion of the court before whom the conviction is had; and such corporation shall be also civilly responsible for all damages sustained by any party by reason of such default, provided the action for the recovery of such damages be brought within three months after the same has been sustained." (*Ib.* s. 3.)

TOLLS—HOW FIXED, &c.—"The president and directors of any company may from time to time fix, regulate, and receive the tolls and charges to be paid by persons passing and repassing with horses, carts, carriages, and other vehicles; and for cattle, swine, sheep, or other animals driven upon, over, and along the road of the company; or by persons passing over any bridge with any such carriages or animals; or using any work constructed, made or owned by the company." (Con. Stat. C. c. 49, s. 73.)

WHEN TOLLS TO BE COLLECTED.—"Whenever two or more miles of such road or extension thereof have been completed, tolls may be taken therefor; but tolls shall not be taken on any other work of the company until the same has been completed." (*Ib.* s. 74.)

LIMITATION OF TOLLS.—"Tolls may be taken by the company at each time of passing each gate upon the road constructed or owned by the company, for any portion of such road on either side or both sides of the said gate (not being more than five miles) to the next gate or gates on the same road, if any, and not exceeding five miles in the whole; or for the whole of such road, if the length thereof do not exceed five miles and there be only one gate thereon, at the following rates per mile, that is to say:

1. "For every vehicle, whether loaded or otherwise, and for the horse or other beast, or one of the horses or other beasts drawing the same, one penny; and for every additional horse or other beast drawing such vehicle, one halfpenny;

2. "For every horse with or without a rider, one halfpenny;

3. "For each head of neat cattle, one halfpenny;

4. "For every score, or number less than a score, of sheep or swine, one halfpenny; and

5. "In addition to the above rates, one halfpenny for every one hundred pounds over and above four thousand, which a loaded vehicle weighs." (*Ib.* s. 75.)

Extra Tolls.—"Every vehicle loaded with masts, spars, hewn or round timber, or otherwise, exceeding in weight two tons, shall, at each time of passing each gate, pay for each ton over and above two tons the sum of fifty cents; and all vehicles with wheels used for the above purpose shall have not less than five-inch tires, under penalty of paying double the amount of toll above provided." (*Ib.* s. 76.)

Roads intersecting.—"Whenever a road, constructed under this or any former act intersects a road constructed or owned by another chartered company, no higher rate of toll shall be demanded from persons travelling along the said last-mentioned road, for the distance travelled between such intersection and either of its termini, than the rate per mile charged by the said company for travelling along the entire length of their road so intersected: but it shall be incumbent on such persons to produce a ticket from the last toll-gate on the intersecting road, as evidence of their having travelled only from such intersection." (*Ib.* s. 77.)

Tolls on Bridges.—"Any company formed under this or any other act may, with the sanction of the council of the county having jurisdiction in the locality, charge a higher rate of toll than is hereby authorized at any toll-gate erected at any bridge upon or connected with any road constructed by such company; and the council, in sanctioning such additional toll, may take into account the cost of such bridge, and may

calculate the toll as if for so many additional miles of road as might have been constructed for the like expenditure." (*Ib.* s. 78.)

COLLECTION OF EXTRA TOLLS.—"Such last-mentioned tolls shall be collected in the same manner, and persons evading the same shall be liable to the same penalties as herein provided with respect to other tolls." (*Ib.* s. 79.)

TOLL-GATES, &c.—"Every such company may erect such number of toll-gates, check-gates, and side-bars, in, along, or across the said roads, and upon any other such work respectively, and fix, regulate, and collect such tolls, not exceeding the rates hereinbefore provided, to be collected at each gate, check-gate, or side-bar, as they deem expedient; and may from time to time alter such tolls, toll-gates, check-gates, and side-bars, and may erect and maintain such toll-houses, toll-gates, check-gates, side-bars, and other buildings and erections as are necessary for the due management of the business of the company." (*Ib.* s. 80.)

VEHICLES CROSSING A ROAD.—"No tolls shall be taken for merely crossing a road, or for travelling thereon in crossing from one transverse road to another, when the distance between such transverse roads does not exceed one hundred yards." (*Ib.* s. 18.)

CHECK-GATES.—"In case any company deems it necessary or convenient to erect a check-gate on any part of their road, they shall not demand toll at both the check-gate and the gate to which it acts as a check; but tickets shall be issued at the check-gate, on payment of the toll demanded, clearing the principal gate, and *vice versâ;* and the distance regulating the rates of toll shall not be calculated between any of the check-gates and the principal gates on such road, but only between the principal gates themselves." (*Ib.* s. 82.)

COMPANY TO REPAIR.—"After any road or portion of a road, bridge, or other such work, constructed or acquired by any company or municipality under this or any former act, has been completed and tolls established thereon, the company or municipality shall keep the same in repair." (*Ib.* s. 84.)

ENGINEER TO EXAMINE THE ROAD.—"If any such company or municipality suffers any portion of their road on which tolls have been taken to get out of repair, the Judge of the county court in the county in which such road is situated may, upon the requisition of twelve freeholders residing within such county, stating that such road is so much out of repair as to impede or endanger Her Majesty's subjects and others travelling thereon, direct the engineer of the county, and if there be no such county officer, then any competent engineer, to examine the road." (*Ib.* s. 85.)

NOTICE TO REPAIR.—"The engineer so appointed shall, upon receiving such directions, immediately inspect and examine the road; and if upon examination it be found so much out of repair as to impede and endanger Her Majesty's subjects and others travelling thereon, as stated in the requisition, he shall notify the president of the company or the head of the municipality to whom the road belongs, by leaving a written notice with any of the keepers of the toll-gates belonging to such company or municipality, stating that, in pursuance of directions from the Judge of the county court, he has inspected their road and found it to be out of repair, and requiring them to take notice thereof, and to cause the same to be repaired within a certain time to be named in such notice, and the time shall be such as, in the opinion of the engineer, will be sufficient to make the required repairs." (*Ib.* s. 86.)

TOLLS NOT TO BE COLLECTED TILL REPAIRS MADE.—"If the directors of the company or the municipal council, after the service of such notice, refuse or neglect to repair the road in a good and efficient manner within the period limited in the notice, then, from and after the expiration of such period, and until such repairs be completed, neither the directors nor council, nor any person authorized by them, shall demand or take any toll from any person travelling with or without any beast or vehicle, for passing through the nearest toll-gates on either side of the portion or portions of the road so reported to be out of repair." (*Ib.* s. 87.)

PENALTY.—"If, after the expiration of the period limited in the notice before mentioned, and before the required repairs have been completed, any person acting as a keeper of any such toll-gate demands or takes any tolls, or refuses to allow any person travelling as aforesaid to pass through such toll-gates without payment thereof, he shall, upon conviction before a Justice of the Peace for the county in which such toll-gate is situated, upon the oath of one credible witness, forfeit and pay a sum of not less than one dollar nor more than four dollars for every such offence, to be collected or enforced in the manner prescribed for the collection or enforcement of other penalties under this act." (*Ib.* s. 88.)

TAKING MORE THAN THE PROPER TOLL.—"If any person, being either the renter or collector of tolls at any gate on any road, takes a greater toll than is authorized by law, he shall for every such offence forfeit and pay the sum of twenty dollars, to be recovered in the same manner as other penalties imposed by this act." (Con. Stat. U. C. c. 49, s. 89.)

AS TO MONEY CHANGE.—"No gate-keeper shall be bound to give change for a larger amount than one dollar." (*Ib.* s. 90.)

EXEMPTION FROM TOLL.—"The following persons shall be exempted from the payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay or landing-place, or passing any turnpike roads or bridges, or passing any toll-gate or road made or improved under this or any former act:

1. "Her Majesty's officers and soldiers, being in proper staff, or regimental, or military uniform, dress or undress, and their horses (but not when passing in any hired or private vehicle);
2. "Recruits marching by route;
3. "Prisoners under military escort;
4. "Enrolled pensioners in uniform, when called out for training or in aid of the civil power;
5. "Carriages and horses belonging to Her Majesty or employed in her service, when conveying such persons or their baggage, or returning therefrom;

6. "Persons, horses or carriages going to or returning from a funeral;

7. "And any person with horse or carriage going to or returning from his usual place of religious worship on the Sunday;

8. "Any farmer residing on the line of any such road passing any toll-gate opposite to and immediately adjoining his farm, when going to or returning from his work on such farm." (*Ib.* s. 91.)

PERSONS GOING OR COMING FROM DIVINE SERVICE FREE FROM TOLL.—"All persons going to or returning from divine service on any Sunday or obligatory holiday, in, or upon or with their own carriages, horses or other beasts of draught, and also their families and servants, being in, or upon and with such carriages, horses or other beasts of draught, shall pass toll free through any turnpike road through which they may have occasion to pass, whether such road, turnpike road, and the tolls thereon, belong to the province, to to any local municipal authority, or body of trustees, or commissioners for local purposes, or to any incorporated or unincorporated company." (Con. Stat. C. c. 86, s. 1.)

VEHICLES, CATTLE, &c., CROSSING ROADS.—"No vehicle, laden or unladen, and no horses or cattle belonging to the proprietor or occupier of any land divided by any turnpike road, shall be liable to toll in passing through any toll-gate on such road (at whatever distance the same may be from any city or town) for the sole purpose of going from one part of the lands of such proprietor or occupier to another part of the same; Provided, such vehicle, horses or cattle do not proceed more than half a mile along such turnpike road, either in going or returning, and for farming or domestic purposes only." (*Ib.* s. 2.)

VEHICLES LADEN WITH MANURE.—"Every vehicle laden solely with manure, brought from any city in Lower Canada, or any city or incorporated town in Upper Canada, and employed to carry the same into the country parts for the purposes of agriculture, and the horse or horses, or other beast of draught,

drawing such vehicle, shall pass toll free through every turnpike gate or toll-gate on any turnpike road within twenty miles of such city or town, as well as going from such city or town as in returning thereto, if then empty." (*Ib.* s. 3.)

ACT NOT TO APPLY TO BRIDGES.—"This act shall not extend to any toll-bridge, the tolls on which are vested in any party other than the crown." (*Ib.* s. 4.)

MAIL COACHES, &c.—"Tolls may be charged on vehicles carrying the mails upon any road or bridge constructed under this or any former act, or under any special or private act of incorporation; but as regards all roads and bridges constructed by the provincial government or board of works, and transferred to any company on condition that the mails should pass free over the same, an exemption from toll shall continue in favour of the mails; and, in the case of any such last mentioned road or bridge, there shall be no such exemption in favour of any mail stage or other vehicle drawn by two horses and carrying the mail, and containing or having more than four passengers travelling thereby, or in favour of any mail stage or other vehicle drawn by four horses and carrying the mail, and containing or having more than eight passengers travelling thereby." (Con. Stat. U. C. c. 49, s. 92.)

"But every such mail stage or vehicle drawn by two horses and containing more than four passengers, and every such mail stage or vehicle drawn by four horses and containing or having more than eight passengers travelling thereby, shall for every extra passenger beyond four or eight respectively be liable at each gate to a toll of one penny." (*Ib.* s. 93.)

(As to toll-gate keepers stopping mails, see article "Post Office," *post.*)

AS TO ROADS LEASED BEFORE JUNE 14, 1853.—"Nothing herein contained shall affect the rate of toll which any party is entitled to collect under any lease or contract executed before the fourteenth June, one thousand eight hundred and fifty-three." (*Ib.* s. 94.)

PENALTY FOR NON-PAYMENT OF TOLL.—"If any person not exempted by law from paying toll wilfully passes or attempts to pass any toll-gate, check-gate or side-bar lawfully established, without first paying the legal toll, he shall forfeit a sum not exceeding twenty dollars and costs, to be recovered in the same manner as other fines and forfeitures under this act; and in case no sufficient distress can be found to satisfy a warrant issued against the goods and chattels of the offender, such offender shall then be committed to the common gaol of the county for any period not exceeding one month." (*Ib.* s. 95.)

"In case the offender after conviction neglects or refuses to pay the amount of the fine and costs, and it be by affidavit made to appear to the satisfaction of the acting Justice that the offender has no goods and chattels within the jurisdiction of such Justice, a warrant of commitment may issue; and the party convicted may be imprisoned thereon in the first instance upon any conviction under the last preceding section of this act, without issuing any warrant of distress against goods and chattels." (*Ib.* s. 96.)

HOW PAYMENT OF TOLLS ENFORCED.—"If any person, subject or liable to the payment of any toll by virtue of this or any former act, neglects or refuses, after demand thereof, to pay the same, the person authorized to collect such toll may by himself, or taking such assistants as he thinks necessary, seize or distrain any horse, cattle, carriage or other thing in respect of which such toll is imposed, together with their respective bridles, saddles, gears, harness, or accoutrements (except the bridle or reins of any other horse or beast separate from such horse or beast), or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed, or any of the goods and chattels of the persons so required to pay." (*Ib.* s. 97.)

SALE OF THINGS SEIZED FOR TOLL.—"If the toll so neglected or refused to be paid, and the reasonable charges of such seizure and distress, be not paid within four days next after such seizure and distress made, the person so seizing and distraining, after having given four days' public notice thereof,

may sell the horse, beast, cattle, carriage and things so seized and distrained, or a sufficient part thereof, returning to the owner thereof upon demand the overplus of the money arising from such sale (if any) and what shall remain unsold, after such tolls, and the reasonable charges occasioned by such seizure, distress and sale, have been deducted." (*Ib.* s. 98.)

AVOIDING PAYMENT OF TOLL.—Persons using a road and turning off the same in order to avoid payment of toll, shall for every such offence forfeit and pay two dollars and costs; may be fined by any one Justice of the Peace. (See *ib.* s. 99.)

PENALTY FOR PERSONS ALLOWING OTHERS TO PASS THROUGH THEIR LANDS TO AVOID PAYMENT.—If any person permits or suffers any one to pass through his lands with any vehicle or animal liable to toll, whereby the toll is avoided, he shall, on conviction before any one Justice, incur a penalty of not over four dollars nor less than one dollar, with costs. (See *ib.* s. 100.)

PENALTY ON PERSONS LEAVING HORSES ON THE ROAD TO AVOID PAYMENT.—Persons leaving on the road any horses or other animals liable te toll, or any vehicle, &c., in order to avoid payment of toll or any portion thereof, shall as aforesaid, on conviction before any Justice of the Peace, forfeit and pay a sum not exceeding four dollars, with costs. (See *ib.* s. 101.)

PENALTY ON PERSONS FALSELY CLAIMING EXEMPTION FROM TOLL.—Persons falsely claiming exemption or evading payment of tolls, shall forfeit to the owners of the road the sum of four dollars and costs, to be recovered summarily before a Justice of the Peace. (See *ib.* s. 102.)

PENALTY ON PERSONS INJURING ROADS, &C.—Persons wilfully and maliciously injuring or destroying in whole or in part any portion of the property of the owners of any road shall be guilty of a misdemeanor, and be punished, either by imprisonment in the provincial penitentiary for a term not exceeding three nor less than two years, or by fine or imprisonment for any term less than two years, in the discretion of the court. (See *ib.* s. 103.)

PENALTIES.—"In case any person

Removing materials.—1. "Removes any earth, stone, plank, timber or other materials used or intended to be used in or upon any road for the construction, maintenance or repair thereof; or

Driving on the soft part of the road.—2. "Drives any loaded wheel carriage or other loaded vehicle, upon that part of any road constructed under this or any former act between the stones, plank or hard road and ditches, further than may be necessary in passing another vehicle, or in turning off or upon such road; or

Damaging bridges, &c.—3. "Causes any injury or damage to be done to the bridges, culverts, posts, rails or fences; or

Hauling timber so as to injure the road.—4. "Hauls or draws upon any part of any such road any timber, stone or other thing carried principally or in part upon wheeled carriages, or upon sleighs, so as to drag or trail upon such road to the prejudice thereof; or

Leaving any carriage on the road.—5. "Leaves any waggon, cart or other carriage upon such road without some proper person in the custody or care thereof, longer than may be necessary to load and unload the same, except in case of accident, and in cases of accident for any longer time than may be necessary to load and unload the same; or

Laying timber, stones, &c.—6. "Lays any timber, stones, rubbish or other thing whatsoever upon the road, to the prejudice, interruption and danger of any person travelling thereon; or

Leaving stones on the road used to block carriages.—7. "Having blocked or stopped any cart, waggon or other carriage, in going up a hill or rising ground, causes or suffers to remain on such road any stone or other thing with which such cart or carriage had been blocked or stopped; or

Injuring lamp-posts, &c.—8. "Pulls down, damages, injures or destroys any lamp or lamp-post put up, erected or placed in or near the side of such road, or any toll-house erected on such road, or wilfully extinguishes the light of any such lamp; or

Damages to table of tolls.—9. "Wilfully pulls down, breaks, injures or damages any table of tolls put or fixed at any gate,

check-gate or bar on any part of such road, or any sign board erected by any company upon any road or bridge constructed by them; or

Defacing mile post.—10. "Wilfully or designedly defaces or obliterates any of the letters, figures or marks thereon, or on any finger-post, or mile-post or stone; or

Throwing rubbish into drains.—11. "Throws any earth, rubbish or any other matter or thing into any drain, ditch, culvert or other water-course made for draining any such road; or

Carrying away any stones, gravel, &c.—12. "Without permission carries away any stones, gravel, sand or other materials, dirt or soil from any part of such road, or digs any holes or ditches on the allowance for the same; or

Allowing swine to run at large.—13. "Allows any swine to run at large to the injury of the road; every such person shall, upon conviction thereof in a summary way, before any Justice of the Peace in or near the place where the injury has been done, be sentenced to pay all damages sustained by such company, which damages shall be ascertained by the Justice on hearing the complaint, and also be sentenced to pay a fine of not more than ten dollars nor less than one dollar, together with all costs; which damages, fines and costs shall be paid within a time to be limited by the Justice, and in default thereof the same shall be levied as hereinafter provided." (*Ib.* s. 104.)

COMPANY NOT TO IMPEDE GRADED PORTION OF THE ROAD.—"No company, or municipality, or contractor, sub-contractor, or person employed by such company or municipality, contractor or sub-contractor, shall leave or place upon the graded portion of any road constructed or acquired by such company or municipality under this act or any former act, whether such part of the road be or be not macadamized, gravelled or planked, any stone, gravel, plank, timber or other material whatsoever, so as to prevent the public from using, or to impede the free use of the whole of such graded portion of the road; and for any offence against this section such company, municipality, contractor, sub-contractor or other person, shall

also incur a penalty of not less than one dollar nor more than twenty dollars, to be recovered summarily before a Justice of the Peace, in the manner provided by this act for the recovery of other penalties." (*Ib.* s. 105.)

APPLICATION OF PENALTIES.—"For offences against the last section in the case of roads owned by companies, the penalty shall be paid to the municipality within which such road is situate; and in the case of roads owned by municipalities, one-half the fine shall be paid to the complainant, and the residue to the Receiver General for the public uses of this province." (*Ib.* s. 106.)

RECOVERY OF FINES AND FORFEITURES.—"Every fine and forfeiture authorized to be summarily imposed by this act may be recovered upon information and complaint before any Justice of the Peace of the county within which the same has been incurred, and may be levied and collected by distress and sale of the offender's goods and chattels, under the authority of a warrant of distress for that purpose, to be issued by the Justice before whom the conviction is had; and in case there be no goods or chattels to satisfy the warrant, the offender may be committed to the common gaol of the county for any period not exceeding one month; but nothing in this section contained shall interfere with the provisions made in the ninety-sixty section of this act, for issuing a warrant of commitment in the first instance, upon conviction for any offence therein mentioned." (*Ib.* s. 107.)

ARREST OF PARTY NOT APPEARING.—"In any proceeding or prosecution before a Justice of the Peace under this act, the Justice may summon the party complained against to appear at a time and place to be named in the summons, and if he does not appear, then, upon proof of the due service of the summons upon such party, either personally or by leaving a copy thereof at his usual place of abode, the Justice may proceed either to hear and determine the same *ex parte*,* or to issue his warrant for apprehending and bringing the party before him-

* That is, notwithstanding the absence of the accused.

self or some other Justice of the Peace; or the Justice may, if he thinks fit, without previous summons issue the warrant, and the Justice before whom the party appears or is brought shall hear and determine the case." (*Ib.* s. 108.)

APPLICATION OF FINES, &c.—"Each fine and forfeiture collected under this act shall, unless otherwise provided, be paid to the company or municipality owning the road or other work, in respect of which such fine and forfeitures have been imposed, for the use of such company or municipality." (*Ib.* s. 109.)

LIMITATION OF ACTIONS.—"No action or suit shall be brought for any matter or thing done in performance of this act, unless such action or suit be brought within six months next after the fact committed; and the defendant in any such action or suit may plead the general issue only, and on the trial give this act and the special matter in evidence." (*Ib.* s. 110.)

OFFICERS, &c., MAY BE WITNESSES.—"In any action or suit brought by or against any such company upon a contract, or for any matter or thing whatsoever, any stockholder or any officer or servant of the company shall be competent as a witness, and his testimony shall not be deemed inadmissible on the ground of interest, or of his being such servant or officer." (*Ib.* s. 111.)

CARRIAGES MEETING ON HIGHWAYS.—"In case any person travelling or being upon any highway in charge of a vehicle drawn by one or more horses, or one or more other animals, meets another vehicle drawn as aforesaid, he shall turn out to the right from the centre of the road, allowing to the vehicle so met one half of the road." (Con. Stat. U. C. c. 56, s. 1.)

CARRIAGES OVERTAKEN.—"In case any person travelling or being upon any highway in charge of a vehicle as aforesaid, or on horseback, be overtaken by any vehicle or horseman travelling at a greater speed, the person so overtaken shall quietly turn out to the right, and allow the said vehicle or horseman to pass." (*Ib.* s. 2.)

LOADED VEHICLES—"In the case of one vehicle being met or overtaken by another, if by reason of the extreme weight of the load on either of the vehicles so meeting, or on the vehicle so overtaken, the driver finds it impracticable to turn out as aforesaid, he shall immediately stop, and, if necessary for the safety of the other vehicle, and if requested so to do, he shall assist the person in charge thereof to pass without damage." (*Ib.* s. 3.)

PENALTY IF DRIVER INTOXICATED.—"In case any person in charge of a vehicle, or of a horse or other animal used as the means of conveyance, travelling or being on any highway as aforesaid, be through drunkenness unable to drive or ride the same with safety to other persons travelling on or being upon the highway, he shall incur the penalties imposed by this act." (*Ib.* s. 4.)

RACING FORBIDDEN.—"No person shall race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent language upon any highway." (*Ib.* s. 5.)

SWEARING FORBIDDEN.—"In case any person so races or drives, or shouts or uses blasphemous or indecent language, he shall incur the penalties imposed by this act." (*Ib.* s. 6.)

SLEIGH HORSES TO HAVE BELLS.—"Every person travelling upon any highway with a sleigh, sled or carriole, drawn by horse or mule, shall have at least two bells attached to the harness." (*Ib.* s. 7.)

NOTICE TO BE POSTED AT THE BRIDGES TO WHICH THIS ACT APPLIES.—"Every person who has the superintendence and management of any bridge exceeding thirty feet in length, shall cause to be put up at each end thereof, conspicuously placed, a notice legibly printed in the following form:

"Any person or persons riding or driving on or over this bridge at a faster rate than a walk, will, on conviction thereof, be subject to a fine, as provided by law." (*Ib.* s. 8.)

PELALTY ON PERSONS DEFACING SUCH NOTICE.—"In case any person injures, or in any way interferes with such notice, he

shall incur a fine of not less than one nor more than eight dollars, to be recovered in the same manner as other penalties imposed by this act." (*Ib.* s. 9.)

FAST DRIVING OVER BRIDGES.—"If while such notice continues up, any person rides or drives a horse or other beast of burden over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this act." (*Ib.* s. 10.)

PENALTIES.—"In cases not otherwise specially provided for, if any person contravenes this act, and such contravention be duly proved by the oath of one credible witness before any Justice of the Peace having jurisdiction within the locality where the offence has been committed, the offender shall incur a penalty of not less than one dollar nor more than twenty dollars, in the discretion of such Justice, with costs." (*Ib.* s. 11.)

"If not paid forthwith, the penalty and costs shall be levied by distress and sale of the goods and chattels of the offender, under a warrant signed and sealed by the convicting Justice; and the overplus, if any, after deducting the penalty and costs and charges of sale, shall be returned on demand to the owner of such goods and chattels." (*Ib.* s. 12.)

"In default of payment or distress, the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justices, unless such fine, costs, and charges be sooner paid." (*Ib.* s. 13.)

"No such fine or imprisonment shall be a bar to the recovery of damages by the injured party, before any court of competent jurisdiction." (*Ib.* s. 14.)

"Every fine collected under this act shall be paid to the chamberlain or treasurer of the local municipality or place in which the offence was committed, and shall be applied to the general purposes thereof." (*Ib.* s. 18.)

"The council of every township, town, and incorporated village may pass by-laws:

STATUTE LABOUR.—1. "For empowering any person, resident or non-resident, liable to statute labour, within the munici-

pality, to compound for such labour for any term not exceeding five years, at any sum not exceeding one dollar for each day's labour;

2. "For providing that a sum of money, not exceeding one dollar for each day's labour, may or shall be paid in commutation of such statute labour;

3. "For increasing or reducing the number of days' labour to which the persons rated on the assessment-roll or otherwise shall be liable, in proportion to the statute labour to which such persons are, in respect of the amounts at which they are assessed or otherwise, respectively liable;

4. "For enforcing the performance of statute labour, or payment of a commutation in money in lieu thereof, when not otherwise provided by law;

5. "For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended." (Con. Stat. U. C. c. 54, s. 330.)

"The council of every township, county, city, town, and incorporated village, may pass by-laws:

Fast driving on Bridges.—"For regulating the driving and riding on public bridges.." (*Ib.* s. 331.)

Pits and Precipices.—"For making regulations as to pits, precipices, and deep waters, and other places dangerous to travellers." (*Ib.*)

Highways in Cities, Townships, Towns, and Incorporated Villages.—"Every public road, street, bridge, or other highway in a city, township, town or incorporated village, shall be vested in the municipality, subject to any rights in the soil which the individuals who laid out such road, street, bridge, or highway reserved; and except any concession or other road within the city, township, town, or incorporated village, taken and held possession of by an individual in lieu of a street, road, or highway, laid out by him without compensation therefor." (*Ib.* s. 336.)

Penalty for not repairing.—"Every such road, street, bridge, and highway shall be kept in repair by the corporation,

and the default of the corporation so to keep in repair shall be a misdemeanor, punishable by fine in the discretion of the court; and the corporation shall be further civilly responsible for all damages sustained by any person by reason of such default; but the action must be brought within three months after the damages have been sustained. And this section shall not apply to any road, street, bridge, or highway laid out without the consent of the corporation by by-law, until established and assumed by by-law." (*Ib.* s. 337.)

"The council of every city, town, and incorporated village may pass by-laws for regulating or preventing the encumbering, injuring, or fouling, by animals, vehicles, vessels, or other means, of any road, street, square, alley, lane, bridge, or other communication." (*Ib.* s. 338.)

CERTAIN POWERS OF JUSTICES IN SESSIONS TRANSFERRED.—"All powers, duties and liabilities which at any time before the first day of January, one thousand eight hundred and fifty, belonged to the magistrates in Quarter Sessions, with respect to any particular road or bridge in a county, and not conferred or imposed upon any other municipal corporation, shall belong to the council of the county, or, in case the road or bridge lies in two or more counties, to the councils of such counties; and the neglect or disobedience of any regulations or directions made by such council or councils, shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations or directions of the magistrates would have subjected them to." (*Ib.* s. 341.)

GENERAL POWERS OF COUNTIES RESPECTING HIGHWAYS.—"The council of every county shall have power to pass by-laws for the following purposes:

"For preventing immoderate riding or driving of horses or other cattle on the highways, whether township or county highways;

"For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down, drains, sewers, water-courses, roads, streets, squares, alleys, lanes, bridges or other public communications, running or

being within one or more townships, or between two or more townships of the county, or between the county and any adjoining county or city, or on the bounds of any town or incorporated village within the boundaries of the county, as the interests of the inhabitants of the county in the opinion of the council require to be so opened, made, preserved and improved, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions hereinbefore contained." (*Ib.* s. 342.)

HOMICIDE.

HOMICIDE, which is the killing of a human being, is either justifiable, excusable, or felonious. The first has no tinge of guilt; the second very little; but the third is the highest crime that man is capable of committing against a fellow-creature. Justifiable homicide, which appears almost inconsistent to include among crimes, is of divers kinds, including such cases as arise from unavoidable necessity or accident, without any imputation of blame or negligence in the party killing. Of this kind is homicide committed in the pursuit of justice in the execution of any civil or criminal process. But in these cases the necessity must be real and apparent,—as that the offender could not be arrested, or the riot suppressed, or the property stolen re-taken, unless homicide had been committed.

Homicide is justifiable when committed in the prevention of any atrocious crime, as of murder, burglary, &c. A woman is justifiable in killing one who attempts to ravish her; and so, too, the husband or father may justify the killing a man who attempts a rape on his wife or daughter; but not if he take them together by *consent*,—for the one is forcible and felonious, not the other. Attempting a crime still more abominable may be punished by the death of the unnatural aggressor.

Justifiable homicide reaches not to crimes unaccompanied with *violence*, as picking of pockets, or attempting to break open a house in the day-time, without an attempt at robbery.

The general principles of the law appear to be this: that where a crime, in itself capital, is endeavoured to be committed by force, it is lawful to repel that force by the death of the party attempting; but to kill a person in resisting a trespass or misdemeanor, would be clearly manslaughter or murder.

Excusable homicide is committed either by misadventure or in self-defence.

Homicide by misadventure is where a man doing a lawful act, without any intention to hurt, unfortunately kills another; as where a man is at work with an axe, and the head flies off and kills a bystander,—for the act is lawful, and the effect is merely accidental. So, where a parent is moderately correcting his child, or a master his apprentice or scholar, or an officer punishing a criminal, and death ensues, it is only misadventure; but if he exceed the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and occasion death, it is manslaughter at least, and may be murder, for the act of immoderate correction is illegal.

Prize-Fighting.—As prize-fighting and sword-playing are unlawful, if either of the parties be killed such killing is manslaughter. And in general, if death ensue from any idle, dangerous, and unlawful sport, the slayer is guilty of manslaughter.

To teach and learn to box and fence are equally lawful—they are both the art of self-defence; but sparring exhibitions are unlawful, because they tend to form prize-fighters, and prize-fighting is unlawful.

Homicide in self-defence, from a sudden affray or quarrel, is rather excusable than justifiable in the English law. To excuse this species of homicide, it must appear that the slayer had no probable means, by fleeing or otherwise, to escape from his assailant.

Formerly no man was held entirely free from guilt who took away the life of another without permission of the law; and it is said that both justifiable and excusable homicide were anciently punished by fine and forfeiture. The Consol.

Stat. C. c. 99, s. 96, expressly provides that "no punishment or forfeiture shall be incurred by any person who kills another by misfortune, or in his own defence, or in any other manner without felony."

Felonious homicide is the killing of a human creature without justification or excuse, and is either *murder*, *manslaughter*, or *suicide*. (See under those heads respectively.)

IMPRISONMENT.

In the Penitentiary.—"The Provincial Penitentiary shall be maintained as a prison for the confinement and reformation of persons, male and female, lawfully convicted of crime before the duly authorized legal tribunals of this province, and sentenced to confinement for life or for a term not less than two years; and whenever any offender is punishable by imprisonment, such imprisonment, if it be for life, or for two years or any longer term, shall be in the Provincial Penitentiary: but this shall not prevent the reception and imprisonment, in the said penitentiary, of any prisoner or prisoners sentenced for any period of time by any military or militia court-martial or military authority, under any military act." (Consol. Stat. C. c. 99, s. 100.)

Felony not punishable with Death, How punishable.—"Every person convicted of felony not punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and every person convicted of any felony for which no punishment is specially provided, shall be kept at hard labour in the penitentiary for any term not less than two years, or be imprisoned in any other prison for any term less than two years." (*Ib.* s. 101.)

When length of Imprisonment in discretion of the Court.—"When an offender is by law to be punished by imprisonment for life or for any indefinite term of years, the length of such term shall be in the discretion of the court passing sentence; and when so liable for a term not exceeding a certain

number of years, the length of such term shall also be in the discretion of the court, within such limits (if any) as may be prescribed by any statute in that behalf." (*Ib.* s. 103.)

"When imprisonment is to be awarded for any criminal offence, and no definite period is fixed by law, the term of such imprisonment shall always be in the discretion of the court passing the sentence, within such limits (if any) as may be prescribed by statute in that behalf." (*Ib.* s. 104.)

IMPRISONMENT ELSEWHERE.—"When the sentence of imprisonment is for a term less than two years, such imprisonment shall, if no other place be expressly mentioned, be in the common gaol of the locality in which the sentence is pronounced; or if there be no common gaol, then in the common gaol which is nearest to such locality, or in some other lawful prison or place of confinement, other than the penitentiary, in which the sentence of imprisonment may be lawfully executed." (*Ib.* s. 105.)

FROM WHAT PERIOD IMPRISONMENT IS TO BE RECKONED.—"The period of imprisonment in the Provincial Penitentiary, in pursuance of any sentence, shall commence on and from the day of passing such sentence, whether the convict upon whom the sentence is passed be removed to the said penitentiary forthwith or be detained in custody in any other prison or place of confinement previously to such removal."—(*Ib.* s. 106.)

TRANSPORTATION ABOLISHED.—Offences formerly punished by transportation beyond the seas, are now punished by imprisonment in the penitentiary. (See *Ib.* s. 107.)

CERTAIN ASSAULTS PUNISHABLE WITH IMPRISONMENT.—"In case any person be convicted of any of the following offences as misdemeanors, that is to say: 1. Of an assault with intent to commit a felony; 2. Of an assault upon any peace officer or revenue officer in the due execution of his duty; 3. Or upon any person acting in aid of such officer; 4. Or of an assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of

any other person, for an offence for which such person is liable by law to be apprehended or detained; 5. Or of an assault committed in pursuance of any conspiracy to raise the rate of wages,—the court may sentence the offender to be imprisoned for any term less than two years, and may also fine the offender, and require him to find sureties for keeping the peace." (*Ib.* s. 108.)

CONSECUTIVE IMPRISONMENT.—Whenever sentence is passed for felony on a person already imprisoned under sentence for another crime, the court may award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person had been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could otherwise have been awarded.* (See *ib.* s. 109.)

INNS AND INNKEEPERS.

WHAT IS AN INN.—An inn may be described as a house of public entertainment, where provisions and beds are furnished to persons who apply for them; and that whether it be called a hotel, or tavern, or temperance house. So long as it furnishes the accommodations of lodging and victuals, it comes within the legal description of an inn, and is subject to the same liabilities.

TAVERN-KEEPERS AND EMIGRANTS—LIST OF PRICES.—Every keeper of a tavern, hotel or boarding house in a city, or in any town, village or place to which the Governor in council, by proclamation published in the *Official Gazette*, declares that this section shall extend, who receives into his house as a boarder or lodger any emigrant within three months from his arrival in this province, shall cause to be kept conspicuously

* When a person is convicted of two or more offences in succession at the same time, and imprisonment is awarded where sufficient distress cannot be found, the correct practice is to make out immediately separate warrants of commitment on each conviction, the second warrant stating that the imprisonment thereunder is to commence and take effect upon the expiration of the first; and the third, should there be one, on the expiration of the second.

posted in the public rooms and passages of his house, and printed upon business cards, a list of the rates of prices which will be charged to emigrants per day and week for board or lodging, or both, and also the rates for separate meals; which card shall contain the name of the keeper of such house, together with the name of the street in which it is situated and its number in such street." (Con. Stat. C. c. 40, s. 21.)

"Every keeper of any such tavern, hotel or boarding house, neglecting or refusing to post a list of rates, or to keep business cards, or who charging or receiving, or permitting or suffering to be charged or received for boarding or lodging, or for meals in his house, any sum in excess of the rates of prices so posted and printed on such business cards, or omitting immediately on any emigrant entering such house as a boarder or lodger for the purpose of taking any meal therein, to deliver to such emigrant one of such business cards, shall upon conviction of any of the said offences be deprived of his license, and incur a penalty of not less than five dollars nor more than twenty dollars. (*Ib.* s. 21, sub. sec. 2.)

TAVERN-KEEPERS TO HAVE NO LIEN ON THE EFFECTS OF ANY EMIGRANTS FOR MORE THAN FIVE DOLLARS.—No boarding-house keeper or tavern-keeper shall have any lien on the effects of any emigrant for more than the sum of five dollars; penalty for contravention not less than five and not more than twenty dollars. (See *ib.* s. s. 3.)

WHERE PROSECUTIONS SHALL BE BROUGHT.—"All prosecutions for penalties under section twenty-one of this act may be brought at the place where the offender then is, before any magistrate having jurisdiction in such place, at the suit of any agent for emigration in the employ in this province ef Her Majesty, and the penalties to be recovered under the said section shall be paid to the emigration fund."

"The magistrate before whom any such penalty is recovered may, in his discretion, award any part of the penalty to the party aggrieved by the infraction of law or breach of contract complained of, and may award costs against the offending

party, as in the ordinary cases of summary proceedings, and may also award imprisonment for a period not exceeding three months, to terminate on payment of any penalty incurred under the said clauses." (*Ib.* s. 28.)

No APPEAL.—"No conviction or proceeding under the four next preceding sections shall be quashed for want of form, or be removed by appeal or *certiorari*, or otherwise, into any of Her Majesty's superior courts of record in this province; and no warrant of commitment shall be held void by reason of any defect therein, provided it be thereby alleged that the party has been convicted, and there be a good and valid conviction to sustain the same." (*Ib.* s. 29.)

INOCULATION.

PENALTY AGAINST INOCULATION.—"Any person producing or attempting to produce, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article or thing impregnated with variolous matter, or wilfully by any other means whatsoever, the disease of small-pox in any person in this province, shall be liable to be proceeded against, and convicted summarily before any two Justices; and for every such offence shall, upon conviction, be imprisoned for any term not exceeding one month." (Consol. Stat. C. c. 39, s. 1.)

"Any licensed medical practitioner contravening the provisions of the act, his license shall, upon conviction, become null and void, whether he practice in Upper Canada or Lower Canada." (*Ib.* s. 2.)

JURISDICTION OF JUSTICES IN MUNICIPALITIES.

"Every city and town separated shall be a county of itself for municipal purposes, and for such judicial purposes as are herein specially provided for in the case of all cities, but for no other." (Consol. Stat. C. c. 54, s. 361.)

"The head of every council, the aldermen of a city, the Justices of the Peace, and the reeve of every town, and the deputy-reeve of every township, town, and incorporated village, shall, *ex officio*, be Justices of the Peace for the whole county or union of counties in which their respective municipalities lie, and shall not be disqualified by being an attorney, solicitor, or coroner." (*Ib.* s. 362.)

"Justices of the Peace for any town shall have the same property qualification and take the same oaths as other Justices of the Peace; but no warden, mayor, recorder, police magistrate, alderman, reeve, or deputy-reeve, after taking the oaths or making the declarations as such, shall require to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace." (*Ib.* s. 363.)

"When a town has been erected into a city, and the council of the city duly organized, every commission of the peace theretofore issued for the town shall cease." (*Ib.* s. 364.)

"Justices of the Peace for a county in which a city lies shall, as such, have no jurisdiction over offences committed in the city, and the warrants of county Justices shall require to be endorsed before being executed in a city in the same manner as required by law when to be executed in a separate county; but the general and adjourned Quarter Sessions of the peace for the county may be held, and the jurisdiction thereof exercised within the city." (*Ib.* s. 365.)

"Nothing herein contained shall limit the power of the Governor to appoint, under the great seal of the province, any number of Justices of the Peace for a town, or shall interfere with the jurisdiction of Justices of the Peace for the county in which a town is situate, over offences committed in the town, except only so far as respects offences against the by-laws of the town and penalties for refusal to accept office or to make the declaration of office in the town, as to which jurisdiction shall be exercised exclusively by the police magistrate or mayor or Justices of the Peace for the town." (*Ib.* s. 366.)

"The mayor of any city or town may call out the *posse* to enforce the law within his municipality, should exigencies require it; but only under the same circumstances by which the sheriff of a county may now do so." (*Ib.* s. 367.)

JUVENILE OFFENDERS.

PERSONS OF NOT MORE THAN 16 YEARS OF AGE COMMITTING CERTAIN OFFENCES MAY BE SUMMARILY CONVICTED BY TWO JUSTICES.—"Every person charged with having committed, or having attempted to commit, or with having been an aider, abettor, counsellor, or procuror, in the commission of any offence which is simple larceny, or punishable as simple larceny, and whose age at the time of the commission or attempted commission of such offence does not, in the opinion of the Justice before whom he is brought or appears, as is hereafter mentioned, exceed the age of sixteen years, shall, upon conviction thereof in open court, upon his own confession or upon proof, before two or more Justices of the Peace for any district in Lower Canada, or city, county, or union of counties in Upper Canada, be committed to the common gaol or house of correction within the jurisdiction of such Justices, there to be imprisoned, with or without hard labour, for any term not exceeding three months; or, in the discretion of such Justices, shall forfeit and pay such sum not exceeding twenty dollars as the said Justices may adjudge." (Consol. Stat. C. c. 106, s. 1.)

DISMISSAL.—"If such Justices, upon the hearing of any such case, deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged on finding surety for his future good behaviour, or without sureties, and then make out and deliver to the party charged a certificate under the hands of such Justices, stating the fact of such dismissal." (*Ib.* s. 2.)

FORM OF CERTIFICATE.

——— } TO WIT. } WE, —— of Her Majesty's Justices of the Peace for the —— of ——, (*or*, if a recorder, &c., under sec. 7, I, a —— of the —— of the —— of ——, *as the case may be*), do hereby certify, that on the —— day of ——, in the year of our Lord ——, at ——, in the

said —— of ——, M. N. was brought before us the said Justices (*or*, me the said ——) charged with the following offence, that is to say: (*here state briefly the particulars of the charge*) and that we the said Justices (*or* I, the said ——) thereupon dismissed the said charge.

Given under our hands (*or*, my hand), this —— day of ——.

CASE MAY BE TRIED, &c., IF JUSTICES THINK FIT.—"If such Justices be of opinion, before the person charged has made his defence, that the charge is from any circumstances a fit subject for prosecution by indictment; or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this act, such Justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this act had not been passed." (*Ib.* s. 4.)

JUSTICES TO GIVE PERSONS CHARGED THE OPTION OF A TRIAL BY JURY.—"The Justices before whom any person is charged and proceeded against under this act, before such person is asked whether he has any cause to shew why he should not be convicted, shall say to the person so charged these words, or words to the like effect:

"'We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once.'

"And if such person, or a parent or guardian of such person, then objects, such person shall be dealt with as if this act had not been passed." (*Ib.* s. 5.)

POWER TO JUSTICES TO HEAR AND DETERMINE.—"Any two or more Justices of the Peace for any district in Lower Canada, or for any city, county, or union of counties in Upper Canada, sitting in open court, before whom any such person as aforesaid, charged with any offence made punishable under this act, is brought or appears, may hear and determine the case under the provisions of this act." (*Ib.* s. 6.)

"Every person obtaining such certificate of dismissal as aforesaid, and every person convicted under the authority of this act, shall be released from all further and other proceedings for the same cause." (*Ib.* s. 9.)

COMPELLING APPEARANCE.—"In case any person whose age is alleged not to exceed sixteen years be charged with any such offence, on the oath of a credible witness, before any Justice of the Peace, such Justice may issue his summons or warrant to summon or to apprehend the person so charged to appear before any two Justices of the Peace, at a time and place to be named in such summons or warrant." (*Ib.* s. 10.)

POWER TO ONE JUSTICE TO REMAND OR TAKE BAIL.—"Any Justice or Justices of the Peace, if he or they think fit, may remand for further examination or for trial, or suffer to go at large upon his finding sufficient sureties, any such person charged before him or them with any such offence as aforesaid." (*Ib.* s. 11.)

CONDITION OF RECOGNIZANCE.—"Every such surety shall be bound by recognizance to be conditioned for the appearance of such person before the same or some other Justice or Justices of the Peace for further examination, or for trial before two or more Justices of the Peace as aforesaid, or for trial at some superior criminal court, as the case may be." (*Ib.* s. 12.)

RECOGNIZANCE MAY BE ENLARGED.—"Every such recognizance may be enlarged from time to time by any such Justice or Justices, or court, to such further time as he or they may appoint; and every such recognizance not so enlarged shall be discharged without fee or reward, when the party has appeared according to the condition thereof." (*Ib.* s. 13.)

APPLICATION OF FINES.—"Every fine imposed under the authority of this act shall be paid to the Justices who impose the same, or to the clerk of the recorder's court, or the clerk of the county court, or the clerk of the peace, as the case may be, and shall be by him or them paid over to the county treasurer for county purposes, if the same was imposed in Upper Canada; and if it was imposed in any new district in Lower Canada, then to the sheriff of such district, as treasurer of the building and jury fund for such district, to form part of the said fund; and if it was imposed in any other district in Lower Canada, then to the prothonotary of such

district, to be by him applied, under the direction of the Governor in council, towards the keeping in repair of the court-house in such district, or to be by him added to the moneys or fees collected by him for the erection of a court-house or gaol in such district, so long as such fees are collected to defray the cost of such erection." (*Ib.* s. 14.)

ATTENDANCE OF WITNESSES.—"Any Justice of the Peace shall, by summons, require the attendance of any person as a witness upon the hearing of any case before two Justices under the authority of this act, at a time and place to be named in such summons." (*Ib.* s. 15.)

"Any such Justice may require and bind by recognizance all persons whom he considers necessary to be examined touching the matter of such charge, to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge." (*Ib.* s. 16.)

"In case any person so summoned or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, then, upon proof being first given of such person's having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, either of the Justices before whom any such person ought to have attended may issue a warrant to compel his appearance as a witness." (*Ib.* s. 17.)

"Every summons issued under the authority of this act may be served by delivering a copy thereof to the party, or to some inmate at such party's usual place of abode; and every person so required by any writing under the hand or hands of any Justice or Justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned." (*Ib.* s. 18.)

FORM OF CONVICTION.

——— } Be it remembered, that on the —— day of ——, in the year of
to wit. } our Lord one thousand eight hundred and ——, at ——, in the district of ——, (county *or* united counties, &c., *as the case may be*), *A. O.* is convicted before us, J. P. and J. R., two of Her Majesty's Justices of the Peace for the said district (*or* city, &c.), *or* me, J. S., recorder ——, of the —— of —— (*or as the case may be*), for that he the

said A. O. did (*specify the offence and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*), and we the said J. P. and J. R. (*or* I the said S. J.) adjudge the said A. O. for his said offence to be imprisoned in the —— (*or* to be imprisoned in the ——, and there kept at hard labour) for the space of —— (*or* we, *or* I) adjudge the said A. O. for his said offence to forfeit and pay —— (*here state the penalty actually imposed*), and in default of immediate payment of the said sum, to be imprisoned in the —— (or to be imprisoned in the ——, and there kept to hard labour) for the space of —— unless the said sum shall be sooner paid.

Given under our hands and seals (*or* my hand and seal), the day and year first above mentioned.

And the conviction shall be good and effectual to all intents and purposes.

Defect of Form.—"No such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of Her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party had been convicted, and there be a good and valid conviction to sustain the same." (*Ib.* s. 20.)

Convictions to be sent to Clerks of the Peace.—"The Justices of the Peace before whom any person is convicted under the provisions of this act, shall forthwith transmit the conviction and recognizance to the clerk of the peace for the district in Lower Canada, or for the city, county, or union of counties in Upper Canada, wherein the offence was committed, there to be kept by the proper officer among the records of the court of General Quarter Sessions of the peace." (*Ib.* s. 21.)

No Forfeiture—Restitution.—"No conviction under the authority of this act shall be attended with any forfeiture; but whenever any person is deemed guilty under the provisions of this act, the presiding Justices may order restitution of the property in respect of which such offence was committed, to the owner thereof or his representatives." (*Ib.* s. 23.)

If such Property is not forthcoming.—"If such property be not then forthcoming, the same Justices, whether they award punishment or dismiss the complaint, may inquire into and ascertain the value thereof in money; and if they think

proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments at such periods as the court deems reasonable." (*Ib.* s. 24.)

RECOVERY OF PENALTIES.—"Whenever any Justices of the Peace adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this act, and such penalty is not forthwith paid, such Justices, if they deem it expedient, may appoint some future day for the payment thereof, and order the offender to be detained in safe custody until the day so to be appointed, unless such offender gives security to the satisfaction of such Justices for his appearance on such day; and such Justices may take such security by way of recognizance or otherwise, at their discretion." (*Ib.* s. 26.)

COMMITTAL FOR NON-PAYMENT.—"If at the time so appointed such penalty has not been paid, the same or any other Justices of the Peace may, by warrant under their hands and seals, commit the offender to the common gaol or house of correction within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication; such imprisonment to cease on payment of the said penalty." (*Ib.* s. 27.)

EXPENSES OF PROSECUTION HOW TO BE PAID.—"The Justices of the Peace before whom any person is prosecuted or tried for any offence cognizable under this act, may at their discretion, at the request of the prosecutor or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution of such sums of money as to them seem reasonable and sufficient, to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before them and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and to order payment to the constables and other peace-officers for the apprehension and detention of any person so charged." (*Ib.* s. 28.)

IF THERE BE NO CONVICTION.—"And although no conviction takes place, the said Justices may order all or any of the payments aforesaid, when they are of opinion that the parties o any of them have acted *bonâ fide*." (*Ib.* s. 29.)

AMOUNT OF EXPENSES, HOW ASCERTAINED AND CERTIFIED.—"The amount of expenses of attending before the examining Justices, and the compensation for trouble and loss of time therein, and the allowance to the constables and other peace-officers for their apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses, and constables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such Justices; but the amount of the costs, charges, and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars." (*Ib.* s. 30.)

ORDERS FOR PAYMENT, HOW TO BE MADE AND UPON WHOM.—"Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper Justices of the Peace as aforesaid, shall be forthwith made out and delivered by the said Justices or one of them, or by the clerk of the recorder's court, clerk of the county court, or clerk of the peace, as the case may be, unto such prosecutor or other person, upon such clerk being paid for the same the sum of twenty cents and no more, and shall be made upon the officer to whom fines imposed under the authority of this act are required to be paid over in the district, city, county, or union of counties in which the offence was committed, or was supposed to have been committed, who upon sight of every such order shall forthwith pay to the person named therein, or to any other person duly authorized to receive the same on his behalf, the money in such order mentioned, and shall be allowed the same in his accounts." (*Ib.* s. 31.)

PROTECTION OF PERSONS ACTING UNDER THIS ACT.—"For the protection of persons acting in the execution of this act, all actions and prosecutions to be commenced against any person

for anything done in pursuance of this act shall be laid and tried in the district or circuit in Lower Canada, or in the county or union of counties in Upper Canada where the fact was committed, and shall be commenced within three months after the fact was committed, and not otherwise." (*Ib.* s. 32.)

LARCENY.

DEFINITION.—Larceny has been defined to mean "the felonious taking the property of another without his consent, and against his will, with intent to convert it to the use of the taker."

OF THE TAKING.—There must be an *actual taking* or severance of the property from the possession of the owner. For, although the offender has actually commenced the transaction which, unless prevented, would have ended in the theft, yet, if he has not begun to remove the property, he is only guilty of an attempt to commit the crime of larceny, and not of the crime itself. It is not, however, necessary that the thief should succeed in carrying away the property; the least removal is sufficient to complete the offence. Thus, where a person who had taken a horse in a close, with intent to steal him, was apprehended before he could get him out of the close, it was held that he was guilty of larceny. Where the defendant drew a book about an inch from the prosecutor's pocket, but while the book was still about the prosecutor's person the prosecutor put up his hand, whereupon the defendant let the book drop back into the pocket, this was held to be a sufficient carrying away.

Further, there must be an actual severance. Where goods in a shop were tied to a string, which was fastened by one end to the bottom of the counter, and a thief took up the goods and carried them towards the door as far as the string would permit and was then stopped, this was holden not to be larceny because there was no severance.

It is not necessary that the taking should be by the very hand of the party accused. If the thief fraudulently procure

a person innocent of any felonious intent to take the property for him, his offence will be the same as if he had stolen it himself. Thus, where the thief directed the ostler of an inn to bring out a horse, which he pointed out as his own, and the ostler let out the horse for him to mount, but the thief was detected before he had time to mount, it was held that this was a sufficient taking to constitute the crime of larceny.

THE TAKING MUST BE FELONIOUS.—Secondly, the taking must be felonious; that is, it must be done *with intent to steal* the property. This intent is to be inferred from circumstances; as from the accused having taken the property clandestinely, or given a false account of the transaction, or from any other circumstances which may convince the mind of his guilt. If the taking is accompanied with no circumstances which satisfactorily prove the guilty intent,—as, for instance, if the property is taken openly, or for a temporary purpose, and afterwards returned,—the accused should be acquitted, although the transaction may amount to a trespass at law. If, however, the accused person took the goods originally with the intention of depriving the owner of them and of appropriating them to his own use, his afterwards returning them will not purge the offence. Where two men took two horses out of a stable at night and rode them to a place at a considerable distance and there left them, proceeding on their journey on foot, and the jury found that the horses were taken by the prisoners only in order to ride them and then leave them, it was held that the taking was trespass and not larceny; so if a man take the property of another by mistake, supposing it to be his own, it is no larceny.

TAKING UNDER A CLAIM OF RIGHT.—The circumstance of the property being taken on a *bonâ fide* claim of right, may also negative the intent to steal. Thus, if the owner of land upon which a horse has strayed take a horse which is damaging his property, it will be no felony, although the horse may be wrongfully taken; and the party aggrieved must seek his remedy by action. In all cases where goods are alleged to have been taken on a claim of right, if there is any fair pre-

tence of property or right in the prisoner, he should be acquitted; but if the claim of right is manifestly fictitious, as, for instance, if the prisoner state that the prosecutor gave the property to him, and the circumstances of the case are entirely inconsistent with such a statement, no attention should be paid to it.

Lost Property.—With regard to property found, it has been observed, "The rule of law seems to be, that, if a man finds goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriate them with intent to take the entire dominion over them, really believing when he takes them that the owner cannot be found, it is not larceny. But, if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny."

What Property is the subject of Larceny.—There must be a taking of *such property as is the subject of larceny at law.* Thus, at common law, things which savour of the realty, and are, at the time they are taken, part of the freehold, as minerals, trees, corn, grass, fruits, buildings, things annexed to buildings, and the like, are not the subject of larceny until they have been severed from the freehold, either by some other person or by the thief himself on some former occasion, separated by some interval from the time when he takes them away. But property of this description is protected by our statutes.

Whose Property may be the subject of Larceny—Joint Tenants—Husband and Wife.—There must be a felonious taking of the property of *another.* Thus joint tenants or tenants in common of a chattel cannot be convicted of stealing such chattel from each other, inasmuch as each has a legal property in the chattel and a right of possession. So also a wife cannot commit larceny of the property of her husband, because in law they are considered as one person, and she has a kind of interest in the goods. Neither can a stranger commit larceny of the husband's goods by the delivery of the wife, unless he be her adulterer. But if the husband bail the goods

to a third person, as there will then be a possession in the bailee distinct from that of the husband, it may be larceny if the wife take such goods with a felonious intent.

A MAN MAY STEAL HIS OWN GOODS.—A man may, under certain circumstances, be guilty of larceny in stealing his own goods. Thus, if A. let goods to hire to B. and afterwards feloniously take the goods from B. with the intent to charge B. with the value thereof, or with intent to defraud the custom-house authorities, it is larceny. So if a part-owner of property steals it from the person in whose custody it is, and who is responsible for its safety, he is guilty of larceny. Thus, members of friendly and other societies may be convicted of stealing the money of the society from the person with whom it is deposited, and who is answerable for it.

SPECIAL OWNERSHIP.—It is not necessary that the person from whom the property is stolen should be the absolute owner. It is sufficient if he has a special property, such as a tenant has in the trees and shrubs growing on the land of which he is tenant; or as a drover or grazier has in cattle which he has received to keep; or a carrier in goods which he has received to carry; or generally, such as any bailee has in goods which have been bailed to him.

THE TAKING MUST BE AGAINST THE WILL OF THE OWNER.—The taking of the goods must also be *without the consent of the owner, and against his will.* Where the goods are taken without the knowledge of the owner, few questions can arise; but great difficulty is often experienced in dealing with cases in which it appears that the goods were taken by the delivery or consent of the owner, or some one having authority to deliver them. For the better understanding of these cases, it is necessary to have a clear perception of the different relations in respect to the property in a chattel, which may be occupied by the person who has that chattel in his keeping. First, the man who has a chattel in his keeping may have only the bare charge or custody of it, as a servant has of the goods of his master entrusted to his care. A person occupying this posi-

tion is not considered in law to have any property in the chattel, his possession being regarded as the possession of his master. Secondly, a man may have a chattel in his keeping, having received it from the owner for a certain specified purpose: as a tailor has a piece of cloth which he has received to make into a coat, or a carrier has any chattel which he has received to carry for the owner. Such a person is said to have possession of the chattels, but his right to that possession is limited by the purpose for which he holds it. Thus, speaking generally, the right of the tailor to the cloth which he has made up into a coat ceases when the coat is made and he has received the price of his labour. He has only a *special* property in the cloth, which is liable to be determined on the completion of the purpose for which it was entrusted to him.

Of the absolute ownership of Goods.—Lastly, a man may have a chattel in his keeping, having an absolute right to the possession of it against all the world. Such a person is said to be the owner of the chattel in question, and has the *absolute* property in it. Further, inasmuch as the rights of those who may have a special or absolute property in the chattel are capable of existing apart from the custody, a chattel may be in the charge of A. as servant of B., who has a special property in it, while the absolute ownership, subject to B.'s right, may exist in C. The importance of these distinctions lying in the fact that a dealing with the chattel may or may not amount to larceny, according to the interest in the chattel possessed by the person so dealing with it.

Where the owner parts with the custody only—Servants—Guests at an Inn.—If a person to whom a chattel is delivered has only the bare charge of the custody of it, and the legal possession remains in the owner, such person may commit larceny by a fraudulent conversion of the chattel to his own use. Thus, a servant may be convicted of stealing the property of his master, for he has only the charge or custody of it. A guest may be guilty of larceny in taking a piece of plate set before him to drink from in a tavern, for he has only a liberty to use it, not a possession by delivery.

It has been laid down generally, that when the delivery of the property is made for a certain special and particular purpose, the possession is still supposed to reside unparted with in the first proprietor. But there is much difficulty in applying this general principle to the particular circumstances, as the cases on the subject are not easily reconciled. The better distinction seems to be that adverted to above, viz., that if the owner merely parts with the charge or custody of goods, which he may resume at any moment, the person so receiving them has only a bare, limited use or charge, and may be convicted of larceny if he steal the goods; but that, if the owner delivers the goods upon a contract, he thereby creates a special property in them, and the person receiving them has a distinct possession, which falls within the class of cases next to be considered.

Where the owner parts with the possession, but not with the property.—Where the owner delivers goods to another with intent to part with the possession of them, and to create a special property in the person to whom they are delivered, and the person receiving them feloniously converts them to his own use, with intent to deprive the owner of them, his offence at common law will or will not be larceny, according to the circumstances attending the receipt and delivery, or the subsequent conversion.

Where possession is obtained by fraud.—Where the delivery is obtained fraudulently, with intent to steal the goods, and the receiver subsequently converts them to his own use, he is guilty of larceny. The mode by which the possession of the goods is obtained is quite immaterial, provided only that the owner intends merely to part with the possession of the goods, and to confer nothing more than a special property in them; that is, a right to the possession of them for a limited time, or for a particular purpose, and provided the accused party obtains the goods fraudulently with intent to steal them.

Where the possession is obtained without fraud by a trespass—Without a trespass—Breaking bulk.—But where the possession is obtained innocently,—that is, where the accused person had no intention of stealing the goods at the time of

receiving them,—it becomes material to consider the circumstances attending his conversion of them to his own use. If the possession is obtained by a trespass, the subsequent fraudulent appropriation of the property during the same transaction is a larceny. Thus, if A., driving a flock of sheep from a field, by mistake drives a sheep belonging to another person along with them, and discovers the fact, but nevertheless sells the sheep and appropriates the money, he is guilty of larceny; but if the accused, having received the goods by the delivery of the owner, fraudulently sells them and pockets the money, without changing the condition in which the goods were at the time when he received them, he is not guilty of larceny. If, however, before converting the goods to his own use, he has wrongfully put an end to the contract existing between himself and the owner of the goods, he is liable to be convicted of larceny. The mode by which the contract is most frequently determined is by "breaking bulk," as it is called; that is, by separating things delivered as a whole, and not intended to be separated. Thus, for instance, if a carrier who is entrusted with a bag of wheat to carry, fraudulently sells the bag of wheat and pockets the money, he is not guilty of larceny at common law; but if he takes the wheat out of the bag, and then sells it with the like intent, he has committed the crime of larceny. This distinction, although following naturally from the doctrine that there can be no larceny where there is no trespass, seems somewhat too refined for the exigencies of ordinary life; and it has been practically abolished in ordinary cases of larceny.

Where the owner parts with the property as well as the possession.—Lastly, where the owner of goods delivers them to another, with intent not merely to part with the possession, but also with the property in the goods, there can be no larceny, however fraudulent the means by which such delivery was procured.

Of the Intent.—It is a part of the definition of larceny with which we started, that the goods must be taken *with intent to convert them to the use of the taker.* But this must be understood in a very wide sense, so that a taking with intent

to destroy will be sufficient to constitute larceny, if it be done to effect an object of supposed advantage to the party committing the offence, or to a third person.

"Every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as grand larceny was before the distinction between grand and petty larceny was abolished; and every court whose power as to the trial of larceny was before such abolition limited to petty larceny may try every case of larceny the punishment of which cannot exceed the punishment hereinafter mentioned for simple larceny, and may also try all accessories to such larceny." (Con. Stat. C. c. 92, s. 19.)

"Every person guilty of simple larceny, or of any felony hereby made punishable like simple larceny, shall (except in the cases hereinafter otherwise provided for) be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 20.)

HORSE STEALING AND CATTLE STEALING.—"Any person who steals any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, or lamb, or wilfully kills any of such cattle with intent to steal the carcass, or skin, or any part of the cattle so killed, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 21.)

STEALING SECURITIES.—"Any person who steals any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of this province or of the United Kingdom of Great Britain and Ireland, or of any British colony, or of any foreign state or colony, or in any fund of any body corporate, company or society, or to any deposit in any savings' bank, or who steals any debenture, deed, bond, bill, note, warrant, order, or other security what-

soever, for money or for payment of moneys, whether of this province, or of Great Britain, or of any British colony, or of any foreign state or colony, or who steals any warrant or order for the delivery or transfer of any goods or valuable thing, shall be guilty of felony, of the same nature and in the same degree, and shall be punishable in the same manner, as if he had stolen any chattel of like value with the share, interest or deposit to which the security so stolen relates, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in the warrant or order; and each of the several documents hereinbefore enumerated shall throughout this act be deemed for every purpose to be included under and denoted by the words 'valuable security.'" (*Ib.* s. 22.)

STEALING WILLS.—"Any person who, either during the life of the testator or testatrix, or after his or her death, steals, or for any fraudulent purpose destroys or conceals any will, codicil, or other testamentary instrument, whether the same relates to real or personal estate, or to both, shall be guilty of a misdemeanor, and shall be imprisoned in the penitentiary for any period not exceeding fourteen years, nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or suffer such other punishment by fine or imprisonment, or by both, as the court shall award; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value." (*Ib.* s. 23.)

STEALING TITLE-DEEDS.—"Any person who steals any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title to any real estate, shall be guilty of a misdemeanor, and shall be liable to any punishment which the court may award, as hereinbefore last mentioned." (*Ib.* s. 24.)

"Nothing in this act contained relating to either of the misdemeanors aforesaid, or to any proceeding, conviction, or judgment to be had or taken thereupon, shall prevent, lessen,

or impeach any remedy at law or in equity which the party aggrieved by such offence would have had if this act had not been passed; but nevertheless the conviction of the offender shall not be received in evidence in any action at law or suit in equity against him; and no person shall be convicted of either of the misdemeanors aforesaid by any evidence whatever, in respect of any act done by him, if at any time previously to his being indicted for such offence he disclosed such an act on oath in consequence of the compulsory process of a court of law or equity in any action, suit, or proceeding *bonâ fide* instituted by any party aggrieved, or if he disclosed the same in an examination or deposition before any commissioners of bankruptcy." (*Ib.* s. 25.)

STEALING OR FRAUDULENTLY TAKING RECORDS, &c.—"Any person who steals, or for any fraudulent purpose takes from its place of deposit for the time being, or from any person having the lawful custody thereof, or unlawfully and maliciously obliterates, injures, or destroys any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, of or belonging to any court of justice, or relating to any matter, civil or criminal, begun, depending, or terminated in any such court; or any bill, answer, interrogatory, deposition, affidavit, order or decree, or any original document whatsoever, of or belonging to any court, or relating to any cause or matter begun, depending, or terminated in any such court, or any notarial minute, or the original of any other authentic act, shall be guilty of a misdemeanor, and shall be liable to any punishment which the court may award, as in the twenty-third section hereinbefore mentioned." (*Ib.* s. 26.)

"In any indictment for such last-mentioned offence it shall not be necessary to allege that the article in respect of which the offence has been committed is the property of any person, or that the same is of any value." (*Ib.* s. 27.)

STEALING FROM VESSELS WRECKED, &c.—"Any person who steals any goods or merchandize in any vessel, barge, or boat of any description whatsoever, in any port of entry or dis-

charge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port, river, or canal; or who steals any goods or merchandize from any dock, wharf, or quay adjacent to any such port, river, canal, or creek, shall be imprisoned in the penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in some other prison or place of confinement for any term less than two years." (*Ib.* s. 28.)

"Any person who plunders or steals any part of any ship or vessel which is in distress, or has been wrecked, stranded or cast on shore, or any goods, merchandize or articles of any kind belonging to such ship or vessel, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned." (*Ib.* s. 29.)

"In case any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded or cast on shore, as aforesaid, be by virtue of a search-warrant, to be granted as hereinafter mentioned, found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Justice of the Peace, does not satisfy the Justice that he came lawfully by the same, then the same shall, by order of the Justice, be forthwith delivered over to, or for the use of, the rightful owner thereof; and the offender, on conviction of such offence before the Justice, shall forfeit and pay such sum of money, not exceeding eighty dollars, as to the Justice may seem meet." (*Ib.* s. 30.)

"If any person offers or exposes for sale any goods, merchandize, or articles whatsoever, which have been unlawfully taken, or which are reasonably suspected to have been so taken from any ship or vessel in distress, or wrecked, stranded or cast on shore as aforesaid, any person to whom the same are offered for sale, or any officer of the customs or peace officer, may seize the same, and in such event shall with all convenient speed carry the same, or give notice of such seizure, to some Justice of the Peace; and if the person who offered or exposed the same for sale, being duly summoned by such Justice, does not

appear and satisfy the Justice that he came lawfully by such goods, merchandize or articles, then the same shall, by order of the Justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the Justice) to the person who seized the same; and the offender, on conviction of such offence by the Justice, shall forfeit and pay such sum of money, not exceeding eighty dollars, as to the Justice may seem meet." (*Ib.* s. 31.)

STEALING RAILWAY TICKETS, &c.—"If any person steals any ticket or order for a free or paid passage on any railway, or on any steam or other vessel, he shall be guilty of felony, and shall be imprisoned in any common gaol or prison, with or without hard labour, for any period less than two years." (*Ib.* s. 32.)

STEALING DOMESTIC ANIMALS.—"If any person steals any dog, or steals any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the value of the dog, beast or bird, such sum of money, not exceeding twenty dollars, as to the Justice may seem meet." (*Ib.* s. 33.)

STEALING PARTS OF BUILDINGS, FIXTURES, &c.—"If any person steals, or rips, cuts or breaks with intent to steal, any glass or wood-work belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material, fixed in or to any building whatsoever, or any thing made of metal fixed in any land being private property, or in a fence to any dwelling house, garden or area, or in any square, street, or other place dedicated to public use or ornament, such offender shall be guilty of felony, and shall be punished in the same manner as in the case of simple larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person." (*Ib.* s. 34.)

"If any person steals any chattel or fixture let to be used by him or her, in or with any house or lodging, whether the

contract be entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, such offender shall be guilty of felony, and shall be punished in the same manner as in the case of simple larceny; and in every such case of stealing any chattel an indictment may be preferred in the common form as for larceny, and in every such case of stealing any fixture, an indictment may be preferred in the same form as if the offender were not a tenant or lodger, and in either case the property may be laid in the owner or person letting to hire." (*Ib.* s. 35.)

STEALING TREES, SHRUBS, VEGETABLES, &c.—"If any person steals, cuts, breaks, roots-up, or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be growing, the stealing of such article or articles, or the injury done being to the amount of twenty cents at the least, such offender, being convicted before a Justice of the Peace, shall forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money not exceeding twenty dollars as to the Justice may seem meet." (*Ib.* s. 36.)

"If any person steals or cuts, breaks or throws down with intent to steal, any part of any live or dead fence, or any wooden post, pale or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively, such offender, being convicted before a Justice of the Peace, shall forfeit and pay over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding twenty dollars as to the Justice may seem meet." (*Ib.* s. 37.)

"If the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile, or gate, or any part thereof, being of the value of forty cents at the least, is, by virtue of a search-warrant to be granted as hereinafter mentioned, found in the possession of any person, or on the premises of any person with his knowledge, and if such person, being carried before a

Justice of the Peace, does not satisfy the Justice that he came lawfully by the same, he shall, on conviction by the Justice, forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding eight dollars." (*Ib.* s. 38.)

"If any person steals, destroys, or damages with intent to steal, any tree, sapling, shrub, bush, plant, root, fruit, or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory, such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding twenty dollars as to the Justice may seem meet; and if any person so convicted afterwards commits any of the said offences, such offender shall be guilty of felony, and shall be punished in the same manner as in the case of simple larceny." (*Ib.* s. 39.)

"If any person steals, destroys, or damages with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard, or nursery-ground, such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the value of the article so stolen or the amount of the injury done, such sum of money not exceeding four dollars as to the Justice may seem meet, and in default of payment thereof, together with the costs, if ordered, shall be committed to the house of correction for any term not exceeding one month, unless payment be sooner made." (*Ib.* s. 40.)

LARCENY BY CLERKS AND SERVANTS.—"If any clerk or servant steals any chattel, money, or valuable security belonging to or in the possession or power of his master, such offender shall be imprisoned in the penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 41.)

LARCENY BY BAILEES.—"If any person, being a bailee of any property, fraudulently takes or converts the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, he shall be guilty of larceny." (*Ib.* s. 55.)

RESTORATION OF STOLEN GOODS.—"If any person, guilty of such felony or misdemeanor as aforesaid, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator, and be convicted thereof, the property shall be restored to the owner or his representative; and the court before whom any such person has been so convicted, may from time to time award writs of restitution for the same property, or order the restitution thereof in a summary manner." (*Ib.* c. 99, s. 88.)

WHEN RESTITUTION NOT TO BE MADE.—"If it appear before any award or order be made that any valuable security has been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, has been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration, without any notice and without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, or converted as aforesaid, the court shall not award or order the restitution of such security." (*Ib.* s. 89.)

As to the power of Recorders to issue such order for restitution, see article, "Recorders' Courts," *post.*

ADVERTISING FOR STOLEN PROPERTY.—If any person publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words purporting that no question will be asked, or makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost without seizing or making any inquiry after the

person producing such property, or promises or offers in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of the property, or if any person prints or publishes any such advertisements; in any of the above cases, the offender shall forfeit the sum of eighty dollars for the offence, to any person who will sue for the same by action of debt, to be recovered with the full costs of suit." * (*Ib.* c. 92, s. 105.)

LICENSES.

Shows, &c.—The council of every township, city, town or incorporated village may also pass by-laws for preventing or regulating and licensing exhibitions of wax-work, menageries, circus-riding and other such like shows usually exhibited by showmen, and for requiring the payment of license fees for authorizing the same, not exceeding one hundred dollars for every such license, and for imposing fines upon persons infringing such by-laws, and for levying the same by distress and sale of the goods and chattels of such showman, or belonging to or used in such exhibition, whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding one month." (Con. Stat. U. C. c. 54, sec. 266, sub. sec. 11.)

* It is not necessary to prove that the offender's name is that by which he is named in the information or complaint. The prosecutor has only to prove that the defendant committed the offence, which is done either by identifying him as the person who committed it, or by circumstantial evidence. Nor need the time be the same as laid in the information; but it is enough to prove that the offence was committed at any time before the laying of the information. And, if the property stolen be proved to have been at any time brought within the jurisdiction of the court, though the offence may have been committed out of such jurisdiction, that is sufficient to bring the offence within the cognizance of such court. The kind of goods must be proved as laid; but it is not necessary to prove all the articles mentioned to have been stolen. The goods taken must, in the absence of any express statutable enactment, appear in evidence to be *personal goods*. The value of the goods stolen need not be taken into consideration in order to prove the offence. The goods must be proved to be the property of the person named in the information.

BILLIARD-TABLE.—"The council of every township, city, town, or incorporated village has authority to pass by-laws for licensing, regulating, and governing persons who, for hire or gain, directly or indirectly, keep or have any billiard-table, or keep or have a billiard-table in a house or place of public entertainment or resort, whether said table is used or not." (*Ib.* s. 261, sub. s. 1.)

VICTUALLING-HOUSES.—"The council has also powers to pass by-laws for licensing and limiting the number of and regulating victualing-houses, ordinaries, and houses where fruit, oysters, clams, or victuals are sold to be eaten therein, and other places for the reception, refreshment, or entertainment of the public." (*Ib.* s. 261, sub. s. 2 and 3.)

AUCTIONEERS, HAWKERS, &C.—"The council of every county, city and town separated from the county for municipal purposes, may respectively pass by-laws for the following purposes: F o licensing, regulating and governing auctioneers and other persons selling or putting up for sale goods, wares, merchandise or effects by public auction, and for fixing the sum to be paid for every such license, and the time it shall be in force; for licensing, regulating and governing hawkers or petty chapmen, and other persons carrying on petty trades, who have not become householders or permanent residents in the county or city, or who go from place to place or to other men's houses on foot, or with any animal bearing or drawing any goods, wares or merchandise for sale, or in or with any boat, vessel or other craft, or otherwise, carrying goods, wares or merchandize for sale, and for fixing the sum to be paid for a license for exercising such calling within the county or city, and the time the license shall be in force; and for providing the township clerks with licenses in this and the previous section mentioned, for sale to parties applying for the same in the township, under such regulations as may be prescribed in such by-law; but no duty shall be imposed for hawking or pedling any goods, wares or merchandize, the growth, produce or manufacture of this province, not being liquors mentioned in the 246th section of this act." (*Ib.* s. 284, sub. secs. 2, 3.)

LIMITATION OF ACTIONS.

LIMITATION OF ACTIONS AGAINST JUSTICES.—"No action shall be brought against any Justice of the Peace for anything done by him in the execution of his office, unless the same be commenced within six months next after the act complained of was committed." (Con. Stat. U. C. c. 126, s. 9.)

NOTICE OF ACTION.—"No such action shall be commenced against any Justice of the Peace until one month at least after a notice in writing of the intended action has been delivered to him, or left for him at his usual place of abode, by the party intending to commence the action, or by his attorney or agent, in which notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and implicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and also the name and place of abode or of business of his attorney or agent." (*Ib.* s. 10.)

LIMITATION AS TO SUMMARY PROCEEDINGS.—"When not otherwise provided, the prosecution for every offence punishable on summary conviction shall be commenced within three months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved, and also the evidence of any inhabitant of the district, county or place in which the offence was committed, shall be admitted in proof of the offence, notwithstanding any forfeiture or penalty incurred by the offence may be payable to any public fund of such district, county or place." (Con. Stat. C. c. 99, s. 124.)

OF ACTIONS AND PROSECUTIONS.—"All actions and prosecutions to be commenced against any person for anything done in pursuance of the foregoing criminal acts* shall, unless otherwise provided for, be had and tried in the district, county or

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*The meaning of this section is, that any action or prosecution to be commenced against any Justice, constable or other person for anything done under the authority of any of the acts (Con. Stat. C. c. 91 to 99 inclusive), shall be commenced within the six months, and not that there is to be any limitation of time within which the criminal is to be proceeded against.

place where the fact was committed, and must be commenced within six months next after the fact committed, and not otherwise." (*Ib.* s. 125.)

LUNATICS.

Every person at the age of discretion is, unless the contrary is proved, presumed by law to be sane and to be accountable for his actions.

The question as to sanity in cases when a party is charged with a crime is a question for the court and jury, and it should not be considered by the justice in any cases, except those where he has the power to decide summarily.

If in a case which the justice has the power to decide summarily he becomes satisfied that the defendant was a lunatic at the time of the committing of the offence complained of, he should so decide, and commit the defendant to prison as a dangerous person.

LUNATICS HOW BAILABLE.*—If any person has been discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, and any of Her Majesty's Justices of the Peace before whom such person may be brought thinks fit to issue a warrant for committing him as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by two Justices of the Peace, one whereof shall be the Justice who has issued such warrant, or by the Court of General Quarter Sessions, or in Lower Canada by one of the Judges of

* It is evident from the perusal of this section that the intention of the legislature was to prevent crime by the confinement of all persons of *deranged minds*; and therefore the justice should not enquire or take into consideration the question as to whether or not the *derangement* of mind has been produced by drunkenness.

Insanity produced by drunkenness will not excuse the commission of any crime.

This species of insanity is curable, and the person of deranged mind who assaults and ill-treats his wife should be committed under this section, and not in the ordinary way for want of sureties to keep the peace.

Her Majesty's Court of Queen's Bench, or one of the Judges of Her Majesty's Superior Court for that section of the Province, or in Upper Canada by one of the Judges of Her Majesty's Superior Courts, law or equity, at Toronto."—(Con. Stat. C. c. 109, s. 7.)

INQUIRY AS TO INSANE PRISONERS.—"The chairman of the Quarter Sessions and another Justice, with the aid of two physicians or surgeons, are empowered to inquire as to the necessity of any person imprisoned under sentence, or on criminal charge, or on civil process; and if it be duly certified by such Justices and physicians or surgeons that such person is insane, the Governor, upon receipt of such certificate through the provincial secretary, may direct by warrant under his hand and privy seal, that such person shall be removed to such public lunatic asylum or other proper receptacle for insane persons, as he may judge proper and appoint in that behalf." (*Ib.* s. 8.)

"Every person so removed shall remain under confinement as aforesaid until it has been duly certified to the Governor, through the provincial secretary, by two physicians or surgeons, that such person has become of sound mind; whereupon he may be set at large under the Governor's warrant, or remanded to prison if his period of imprisonment have not expired." (*Ib.* s. 9.)

DANGEROUS LUNATICS TO BE CONFINED BY WARRANT.—"Any two or more Justices of the Peace residing in the city, town, village, township, parish, or place where such lunatic or mad person may be found, of whom the chairman of the Quarter Sessions for the county, if in Upper Canada, or a Judge of the Superior Court, if in Lower Canada, shall be one, may by warrant under their hands and seals, direct to the constables, or some of them, of any such city, town, village, township, parish, or place, cause such person to be apprehended and kept safely locked up in some secure place within the district or county where such city, town, village, township, parish, or place lies, as such Justices under their hands and seals direct and appoint." (*Ib.* s. 10.)

PRISONER BECOMING INSANE.—If any person while imprisoned for any offence whatsoever, or for not finding bail to keep the peace, to answer a criminal charge, or in consequence of any summary conviction or order, appears to be insane, any two Justices of the Peace, the chairman of the Quarter Sessions if in Upper Canada, or if in Lower Canada a Judge of the Superior Court, shall, with the aid of two physicians or surgeons, enquire as to the insanity of such person; and if duly certified by such justice and such physicians, &c., that such person is insane, the Governor, on the receipt of such certificate, through the Provincial Secretary, may by warrant direct such insane person to be removed to some proper public Lunatic Asylum. (See *ib.* s. 8.)

LUNATIC AND HIS LANDS HOW DISPOSED OF.—If the lunatic be not then residing in his legal settlement he may be sent there by warrant of two Justices, and the reasonable charges of his removal, maintenance and treatment during such restraint, for the time only his lunacy or madness continues, shall be satisfied and paid,—such charges being proved upon oath,—by order of two Justices as aforesaid, directing the treasurer of the municipality where any goods, chattels, lands or tenements of such person may be to seize and sell so much thereof, or receive so much of the annual rents, as may be necessary to pay the same, accounting at the next Quarter Sessions; but if such person hath no estate over and above what is sufficient to maintain his family, then such charges to be satisfied and paid by the municipality to which such person belongs: the order for such to be by two Justices directed to the treasurer. (See *ib.* s. 11.)

MAINTENANCE OF LUNATICS.—"In all cases where any person is, by virtue of the first, second, third, fourth, fifth and sixth sections of this act, kept in custody as a lunatic or insane person by order of any court, or by order of the Governor subsequent thereto, any two Justices of the Peace of the district or county where such person is so kept in custody, of whom the chairman of the Quarter Sessions for the county, if in Upper Canada, or a Judge of the Superior Court, if in Lower Canada,

shall be one, may, by the best legal evidence that can be procured, inquire into and ascertain the circumstances of personal legal disability of such lunatic, the place of the last legal settlement, and the circumstances of such person; and if it does not appear that he is possessed of sufficient property which can be applied to his maintenance, may make an order upon such city, town, village, township, parish or place where they adjudge him to be legally settled, to pay such weekly sum for his maintenance while in the place of custody which the court or Governor has appointed, as shall from time to time be fixed upon by the Governor, and by him directed in writing through the Provincial Secretary." (*Ib.* s. 13.)

SETTLEMENT.—"Where such place of settlement cannot be ascertained, such allowance shall be paid by the treasurer of the municipal corporation of the city, town, village, township, parish or place where such person has been apprehended." (*Ib.* s. 14.)

"If it appears that such person is possessed of sufficient property as aforesaid, then such Justices shall order and direct the same to be applied to pay and satisfy the expense of the maintenance of such person, in the manner directed, in the case of lunatics and mad persons, by the eleventh section of this act." (*Ib.* s. 15.)

"The municipal corporation of the city, town, village, township, parish, or place in which the said justices adjudge any lunatic to be legally settled, may appeal against such order to the General Quarter Sessions of the Peace to be holden for the district or county where such order has been made, in like manner and under like restrictions and regulations as against any other judgment, order or decision of a Justice or Justices, giving reasonable notice thereof to the Clerk of the Peace of such district or county, who shall be respondent in such appeal, which said appeal the Justices of the Peace, assembled at the said General Quarter Sessions, are hereby authorised and empowered to hear and determine, in the same manner as other appeals to Courts of Quarter Sessions are now heard and determined in Upper or in Lower Canada respectively." (*Ib.* s. 16.)

WHO SETTLED.—"Every person of full age who has been a resident and inhabitant of any city, town, village, township, parish or place for one year, and the members of his family who have not gained a separate settlement, shall, for the purposes of this act, be deemed settled in such city, town, village, township or place." (*Ib.* s. 17.)

DESTITUTE LUNATICS.—The Clerk of the Peace shall, once in each year, lay before the grand jury of the Quarter Sessions, in each county, an account in detail of all sums of money expended during the last preceding twelve months, or necessary to be advanced during the next ensuing twelve months, for the purpose of maintaining and supporting insane destitute persons, received into the gaol of the county, and the said grand jury may at such Quarter Sessions present such just and reasonable sum as they in their discretion think necessary for the purpose of maintaining and supporting insane destitute persons, either in the gaol or some other place within the county, for the year next ensuing the said sessions, which presentment shall be made once in each year, and in each year the like account in detail of the moneys expended during the past year shall be laid before the grand jury as aforesaid. (Con. Stat. U. C., c. 122, s. 1.)

HOW MONEY TO BE PAID.—"The chairman of the Quarter Sessions may, from time to time, issue his warrant for the payment of such sum of money to the amount, but not exceeding the amount, so presented, and such money shall be payable by the treasurer of the county out of the moneys of the county in his hands and unappropriated, and the account so laid before the grand jury from time to time, so far as the same has been approved of, and the said warrant, shall be a sufficient discharge and indemnity to all persons concerned in the expenditure of such sum of money." (*Ib.* s. 2.)

LUNATIC ASYLUM, PRIVATE.—The Justices of the Peace in any county assembled in Quarter Sessions, may (if and when they think fit) grant a license to any person to keep a house for the reception of lunatics, or of any sex or class of lunatics, within such county. (Con. Stat. C. c. 73, s. 1.)

The Justices shall, at the first Quarter Sessions in every year after they have granted such license, appoint three or more Justices, and also one physician or more, to act as visitors of every house licensed for the reception of lunatics. (*Ib.* s. 2.)

The sections 3 to 110 of said act give the visitors ample powers to enable them to ensure the proper treatment of patients.

MACHINERY—ACCIDENTS FROM.

To prevent Accidents from—Guards, &c., to be erected on Steam-boats, &c.—"The owners of every steam-boat, steam-car, and steam-carriage, and of every mill or building in which machinery is used, shall erect good and substantial guards round such machinery, so as to prevent passengers and other persons on board of, or entering or being in the same respectively, from coming in contact with the machinery used therein or attached thereto." (Con. Stat. U. C. c. 79, s. 1.)

Justices of the Peace to enter Mills, &c., and to examine, &c.—"It shall be the duty of every Justice of the Peace in the county or city in which he resides and usually acts as a Justice of the Peace, to enter into or upon all buildings wherein machinery is erected, and to inspect and examine the machinery thereof or attached thereto; and if upon such examination he finds that there are not proper guards erected, or that the guards used in and about such machinery are insufficient, such Justice shall notify the same to the owner or occupier of such building, and shall direct the necessary guards to be erected." (*Ib.* s. 3.)

Collector or Justice to deliver Certificate of sufficiency of Guards, &c.—"In case, upon the inspection of any steam-boat, steam-car, or steam-carriage, or of any building wherein or whereto machinery is used or attached as aforesaid, it appears to the collector or Justice respectively inspecting the same that the guards erected or to be erected in compliance with this act are sufficiently safe and substantial, such collector or Justice shall deliver to the person in charge of such steam-

boat, steam-carriage, or car, and to the proprietor or occupier of such building as aforesaid, a certificate to that effect; and if such safe-guards are at all times kept in good and sufficient repair, such certificate shall, for six months from the date thereof, be a good and sufficient protection to the masters and owners and occupiers of such steam-boat, steam-carriage, or car and building respectively as aforesaid, against any penalty to be incurred under the provisions of this act." (*Ib.* s. 4.)

PENALTY.—"In case the master or person in charge of any steam-boat, steam-car, or steam-carriage, or the owner or occupier of any building wherein machinery has been erected as aforesaid, neglects or refuses to comply with the directions of such collector or deputy-collector, or Justice of the Peace, as the case may be, he shall forfeit and pay for every such offence a sum not exceeding four dollars and the costs of conviction; and in default of payment of such sum and costs, the offender shall, by a warrant under the hand and seal of such Justice, be sent to the common gaol of the county or city within which the offence was committed, for any period not exceeding thirty days." (*Ib.* s. 5.)

As to the malicious destruction of machinery, see article "Malicious Mischief," *post.*

MANSLAUGHTER.

"Every person guilty of manslaughter shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or shall pay such fine as the court may impose."

Whether there can legally be an accessory to a manslaughter, seems doubtful.

DEFINITION.—Manslaughter is the unlawful killing of another upon a sudden heat of passion, without previous malice, expressed or implied. If, upon a sudden quarrel, two persons fight, and one kill the other, it is manslaughter; and so it is

if they upon such an occasion go out and fight in a field, for this is one continued act of passion. So, also, if a man be greatly provoked, as by pulling his nose, or by taking another in the act of adultery with his wife, and immediately kill the aggressor, it is only manslaughter. But in every case of homicide upon *provocation*, if there be a sufficient time for passion to subside, and reason to interpose, and the person so provoked afterwards kill the other, this is deliberate revenge, and amounts to murder.

Manslaughter may also arise when, in the commission of some unlawful act, death ensues. As, if two persons play at sword and buckler, which is an unlawful game, and one kill the other, it is manslaughter.

So, when a person does an act lawful in itself, but in an unlawful manner, without due caution and circumspection, as, when a workman flings down a stone or piece of timber into the street and kills a man, this may be either excusable homicide, manslaughter, or murder, according to the circumstances under which the original act was done. If it were in a country village, where few passengers are, and he called out to all people to have a care, it is misadventure only; but if it were in the thoroughfare of a city, where many people are continually passing, it will be manslaughter, although he may have given loud warning; and murder, if he knew they were passing and gave no warning at all to them, being malice to all mankind.

The distinction between murder and manslaughter will be well illustrated by the case of Francis Smith, who was indicted for murder in London, England, January 13th, 1804. The neighbourhood of Hammersmith had been alarmed by what was supposed to be a ghost. The prisoner went out with a loaded gun, with intent to apprehend the person who personated the ghost. He met the deceased, who was dressed in white, and immediately discharged his gun and killed him. Chief Baron McDonald, Mr. Justice Rooke, and Mr. Justice Lawrence were unanimously of opinion that the facts amounted to the crime of murder; for the person who represented the ghost was only guilty of a misdemeanor, and no one would

have had a right to have killed him, if he could not otherwise have been taken. The jury brought in a verdict of manslaughter, but the court said they could not receive that verdict: if the jury believed the witnesses, the prisoner was guilty of murder; if they did not believe them, they must acquit. Upon this they found a verdict of guilty. Sentence of death was pronounced, but the prisoner was reprieved.

The cases adduced by Mr. Justice Foster have been cited as apt illustrations of the higher and lower degrees of homicide. "A person driving a cart or carriage happeneth to kill: if he saw or had timely notice of the mischief likely to ensue, and yet drove on, it will be murder, for it was wilfully and deliberately done. Here is the heart regardless of social duty, which I have already taken notice of. If he might have seen the danger, and did not look before him, it will be manslaughter, for want of due circumspection. But if the accident happened in such a manner that no want of care could be imputed to the driver, it will be accidental death, and the driver will be excused."

In *Rex* v. *Martin* it was decided that causing the death of a child by giving it spirituous liquors, in a quantity unfit for its tender age, is manslaughter.

MALICIOUS MISCHIEF.

Malicious Injuries. — In order to constitute an offence within the meaning of the statute, the act must have been done wilfully. All damage done wilfully or maliciously to any property whatever, whether of a public or private nature, is punishable under the statute. The word "wilfully" must be understood as meaning purposely, as distinguished from in ignorance or by accident; and if the damage be done from such a degree of carelessness as a reasonable person would not be guilty of, the party is liable to be proceeded against under this act, which is intended to give a more summary remedy than an action of trespass.

The general principle is, that where a man commits an unlawful act unaccompanied by any circumstances justifying its

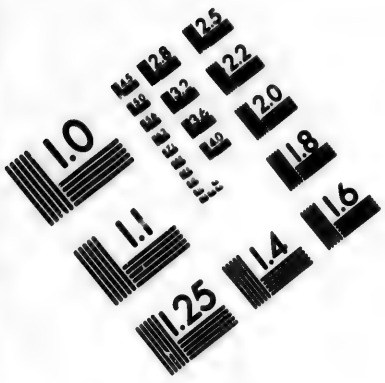
commission, it is a presumption of law that he acted advisedly, and with intent to produce the consequences which have issued. If, therefore, A. throw a stone at B., which breaks the window of C., this would be wilful damage within the meaning of the act. "No person," as observed by Chief Justice Tindall, "can shelter himself from punishment on the ground that the mischief he committed was wider in its consequences than he originally intended." It is not, however, necessary to prove malice against the owner of the property. If the act were done wilfully, it will be presumed to have been done maliciously.*

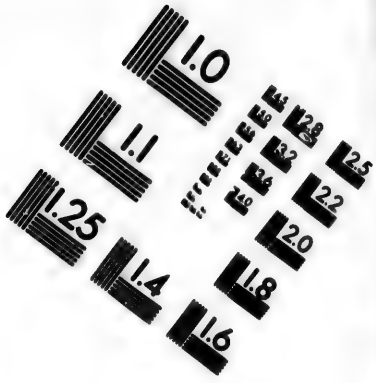
Demolishing Churches.—"If any persons, riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy any church, chapel, or meeting-house, for the exercise of any mode or form of religious worship; or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof; or any machinery, whether fixed or movable, prepared for or employed in any manufacture, or in any branch thereof, every such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any other term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (Con. Stat. C. c. 93, s. 5.)

Exhibiting a False Light.—"If any person exhibits any false light or signal, with intent to bring any ship or vessel into danger, or unlawfully does anything to the immediate destruction of any ship or vessel in distress, such offender shall be guilty of felony, and shall suffer death." (*Ib.* s. 6.)

Destroying parts of Ships in distress.—"If any person unlawfully and maliciously destroys any part of any ship or

* The sections relating to "arson" and "injuries to property from explosive substances," are left out in this place, having been already quoted under the respective heads of "Arson" and "Explosive Substances."





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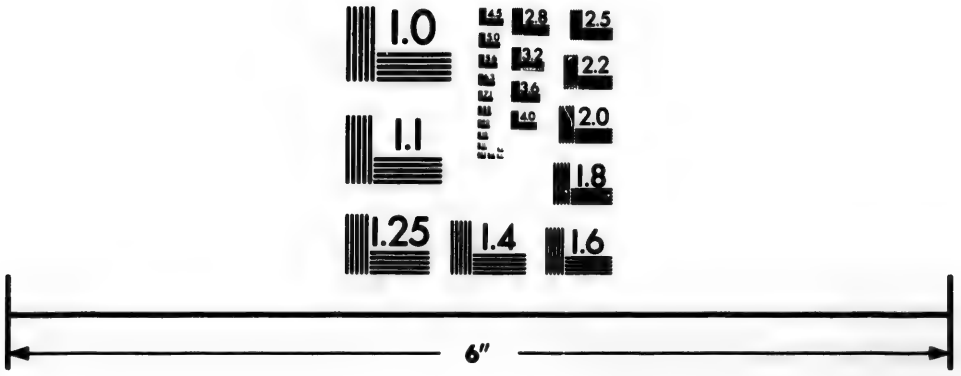

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vessel in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or article of any kind belonging to such ship or vessel, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 10.)

DESTROYING PLANTS, &c.—"If any person unlawfully and maliciously cuts or otherwise destroys any hop-binds growing on poles in any plantation of hops, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding four years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 14.)

"If any person unlawfully and maliciously destroys or damages with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of manufacture, and growing in any land open or enclosed, not being a garden, orchard, or nursery-ground, such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding four dollars as to the Justice seems meet." (*Ib.* s. 15.)

MAIMING CATTLE.—"If any person unlawfully and maliciously kills, maims, or wounds any cattle, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 16.)

DESTROYING GOODS.—"If any person unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or to render useless, any goods or article of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other or mixed with any other material, or any frame-work knitted piece, stocking, hose, or lace respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or

progress of manufacture; or unlawfully and maliciously cuts, breaks or destroys, or damages with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, rack, tackle, or implement, whether fixed or movable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles; or by force enters into any house, shop, building, or place, with intent to commit any of the offences aforesaid, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 17.)

DESTROYING MACHINERY.—"If any person unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or to render useless, any threshing machine, or any machine or engine whether fixed or movable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any frame-work knitted piece, stocking, hose, or lace), such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or in any other prison or place of confinement for any term less than two years." (*Ib.* s. 18.)

BREAKING DOWN BANKS OF CANALS, &c.—"If any person unlawfully and maliciously breaks down or cuts down any sea bank or sea wall, or the bank or wall of any river, canal or marsh, whereby any land is, or is in danger of being, overflowed or damaged, or unlawfully and maliciously throws down, levels or otherwise destroys any rock, sluice, flood-gate, or other work on any navigable river or canal, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding four years, or in any other prison or place of confinement for any term less than two years." (*Ib.* s. 19.)

"If any person unlawfully and maliciously cuts off, draws up or removes any piles, chalk, or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, or unlawfully and maliciously opens or draws up any flood-gate, or does any other injury or mischief to any navigable river or canal with intent, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, such offender shall be guilty of felony, and shall be imprisoned for any term not exceeding two years." (*Ib.* s. 20.)

Destroying Bridges.—"If any person unlawfully and maliciously pulls down, or in any wise destroys any public bridge, or does any injury with intent, and so as thereby to render such bridge or any part thereof dangerous or impassable, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding four years nor less than two years, or in any other prison or place of confinement for any term less than two years." (*Ib.* s. 21.)

Prostrating Gates, &c.—"If any person unlawfully and maliciously throws down, levels, or otherwise destroys, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or ordinance relating thereto in force in this province, or any house, building or weighing engine erected for the better collection, ascertainment, or security of any such toll, such offender shall be guilty of a misdemeanor, and shall be punished accordingly." (*Ib.* s. 22.)

Destroying Ponds and Dams.—"If any person unlawfully and maliciously breaks down or otherwise destroys the dam of any fish pond, or of any water which is private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or unlawfully and maliciously puts any lime or other noxious material in any such pond or water, with intent thereby to

destroy any of the fish therein, or unlawfully and maliciously breaks down or otherwise destroys the dam of any mill-pond, such offender shall be guilty of a misdemeanor, and be punished accordingly." (*Ib.* s. 23.)

DESTROYING TREES, &c.—"If any person unlawfully and maliciously cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling, or shrub, or any under-wood, respectiveiy growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house, such offender shall be guilty of a misdemeanor, and shall be punished accordingly; and if any person unlawfully and maliciously cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling, or shrub, or any under-wood respectively, growing elsewhere than in any of the situations hereinbefore mentioned, such offender (in case the amount of the injury done exceeds the sum of four dollars) shall be guilty of a misdemeanor, and be punished accordingly." (*Ib.* s. 24.)

"If any person unlawfully and maliciously cuts, breaks, barks, roots up, or otherwise destroys or damages the whole or any part of any tree, sapling, or shrub, or any under-wood, wheresoever the same may be growing, the injury done being to the amount of twenty cents at the least, such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding four dollars as such Justice may award." (*Ib.* s. 25.)

"If any person unlawfully and maliciously destroys or damages with intent to destroy any plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery ground, hot-house, green-house, or conservatory, such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding eight dollars as to the Justice may seem meet." (*Ib.* s. 26.)

DESTROYING FENCES, &c.—"If any person unlawfully and maliciously cuts, breaks, throws down, or in any wise destroys

any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof, such offender, being convicted before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding four dollars as to the Justice may seem meet." (*Ib.* s. 27.)

MALICIOUS DAMAGE IN GENERAL.—"If any person wilfully or maliciously commits any damage or injury, or spoil to or upon any real or personal property, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, such person, being convicted thereof before a Justice of the Peace, shall forfeit and pay such sum of money as may appear to the Justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of twenty dollars."* (*Ib.* s. 28.)

"In case of private property the sum of money in the last section mentioned shall be paid to the party aggrieved, except where such party has been examined in proof of the offence, and in such case, or in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a Justice of the Peace under this act is hereinafter directed to be applied; but nothing in that section contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of." (*Ib.* s. 29.)

RAILWAYS, &C.—"If any person wilfully and maliciously puts, places, casts or throws upon or across any railway any wood, stone or other matter or thing, or wilfully and maliciously takes up, removes, or displaces any rail, sleeper, or other matter or thing belonging to any railway, or wilfully and maliciously turns, moves, or diverts any point or other machinery belong-

* It might be questioned if a dog, beast or bird, when killed instantaneously by shooting or otherwise, whether the offence could be proceeded against as for "cruelty to animals;" but the Justice might certainly adjudicate under this section. There is no doubt that a dog is preperty of such a nature as to be the subject of an action at law for damages commensurate with its value, against a person illegally destroying it.

ing to any railway, or wilfully and maliciously makes or shews, hides or removes, or omits to make or shew, any signal or light upon or near any railway, or wilfully and maliciously does or causes to be done, or omits or neglects, or causes to be omitted or neglected, any other matter or thing, with intent to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than three nor more than seven years." (*Ib.* s. 30.)

"If any person wilfully and maliciously casts or throws any wood, stone, or other matter or thing, or causes the same to fall or strike against, into or upon any carriage, engine, tender, or truck used upon any railway, with intent to endanger the safety of any person being in or upon such carriage, engine, tender or truck, such offender shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than three nor more than seven years." (*Ib.* s. 31.)

Malice Defined.—"Every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property in respect of which it is committed or otherwise." (*Ib.* s. 33.)

Enforcement of Penalties.—Section 37 authorizes any Justice, in summary convictions under this act, to commit an offender to gaol, on default of payment forthwith or within the time appointed by the Justice, for two months or less if the sum be under twenty dollars, for four months or less if over twenty and under forty dollars, and for any term less than six months if over forty dollars.

Discharge.—In cases of first conviction the Justice is authorized by section 38 to discharge the offender from the conviction without fine, on his making satisfaction to the party aggrieved for damage and costs, or either, to be ascertained by the Justice.

REMOVING OR DEFACING LANDMARKS.—"If any person knowingly and wilfully pulls down, defaces, alters or removes any monument so erected as aforesaid, such person shall be adjudged guilty of felony; and if any person knowingly and wilfully defaces, alters or removes any other landmark, post or monument, placed by any land surveyor to mark any limit, boundary or angle of any township, concession, range, lot or parcel of land, in Upper Canada or in Lower Canada, such person or persons shall be deemed guilty of a misdemeanor, and, being convicted thereof before any competent court, shall be liable to be punished by fine or imprisonment, or both, at the discretion of such court, such fine not to exceed one hundred dollars, and such imprisonment not to be for a longer period than three months, without any prejudice to any civil remedy which any party may have against such offender or offenders in damages by reason of such offence. But this shall not extend to prevent land surveyors, in their operations, from taking up posts or other boundary marks when necessary, after which they shall carefully replace them as they were before." (*Ib.* c. 77, s. 107.)

DESTROYING TOLL GATES.—"If any person wilfully and maliciously burns, breaks down, injures, cuts, removes, or destroys, in whole or in part, any toll-house, turnpike gate, wall, lock, chain or other fastening, rail, post, bar or other fence, belonging to any toll-gate or toll-house, set up, erected or used for the purpose of preventing the passing by such gate of persons, carriages or other property liable to the payment of toll at such gate, or any house, building, engine or weighing machine erected or used for the better ascertainment or security of any such toll, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished either by imprisonment in the provincial penitentiary for a term not exceeding three years nor less than two years, or by fine and imprisonment in the common gaol for any term less than two years, or at the discretion of the court before whom the offender is convicted." (Con. Stat. U. C. c. 49, s. 103.)

BY-LAWS AGAINST.—"The council of every township, city, town and incorporated village may pass by-laws:

"For preventing the injuring or destroying of trees planted or preserved for shade or ornament;

"For preventing the pulling down or defacing of sign-boards, and of printed or written notices." (Con. Stat. U.C. c. 54, s. 26.)

MARKETS.

"The council of every city, town, and incorporated village may respectively pass by-laws for the following purposes:

"For establishing markets;

"For regulating all markets established and to be established; the places however already established as markets in such municipality shall continue to be markets, and shall retain all the privileges thereof, until otherwise directed by competent authority; and all market reservations or appropriations heretofore made in any such municipality shall continue to be vested in the corporation thereof;

"For preventing or regulating the sale by retail in the public streets of any meat, vegetables, fruit or beverages;

"For preventing or regulating the buying and selling of articles or animals exposed for sale or marketed in the open air;

"For regulating the place and manner of selling and weighing butcher's meat, fish, hay, straw, fodder, wood, and lumber;

"For preventing the forestalling, regrating or monopoly of market grains, meats, fish, fruits, roots and vegetables;

"For preventing and regulating the purchase of such things by hucksters or runners living within the municipality, or within one mile from the outer limits thereof;

"For regulating the mode of measuring or weighing, (as the case may be) of lime, shingles, laths, cordwood, and coal and other fuel;

"For imposing penalties for light weight, or short count, or short measurement in anything marketed;

"For regulating all vehicles, vessels and other things in which anything is exposed for sale or marketed in any street or public place, and for imposing a reasonable duty thereon, and establishing the mode in which it shall be paid;

"For regulating the assize of bread, and preventing the use of deleterious materials in making bread, and for providing for the seizure and forfeiture of bread made contrary to the by-law;

"For seizing and destroying all tainted and unwholesome meat, poultry, fish, or other articles of food;

"For selling, after six hours' notice, butchers' meat, distrained for rent of market stalls." (Con. Stat., U. C., c. 54, s. 294, sub-secs. 6–18.)

MILL-DAMS.

MILLERS TO CONSTRUCT APRONS TO THEIR DAMS.—"Subject to the provisions of the Fishery Act of the province of Canada, in case a mill-dam be legally erected on any stream down which stream lumber is usually brought, or in which stream salmon or pickerel abound, the owner or occupier of such dam shall construct and maintain a good and sufficient apron thereto, no less than eighteen feet wide by an inclined plane of twenty-four feet eight inches to a perpendicular of six feet, and so in proportion to the height where the width of the stream will admit of it; and in case such stream or dam be less than fifteen feet wide, the whole dam shall be aproned in like manner with the same inclined plane; and every such owner or occupier who neglects to construct or maintain such apron, shall for such offence forfeit and pay yearly the sum of one hundred dollars; one moiety thereof to Her Majesty for the public uses of the province, and the other moiety to any person who may sue for the same in any court of record." (Con. Stat. U. C. c. 48, s. 3.)

CONSTRUCTION, &C., OF APRONS, &C.—"Every owner or occupier of a mill-dam, at which an apron or slide is required to be constructed as aforesaid, shall, if necessary, alter, or, if not already built, shall construct such apron or slide so as to afford depth of water sufficient to admit the passage over such apron or slide of such saw-logs, lumber and timber as are usually floated down the streams or rivers whereon such dams are erected; but any owner or occupier of any such dam may construct a waste-gate, or put up brackets and slash-boards in,

upon and across the apron for the purpose of preventing any unnecessary waste of water therefrom, and may keep the same closed when no person is ready and requires to pass or float any craft, lumber or saw-logs over such apron or slide." (*Ib.* s. 4.)

PENALTIES.—"Every owner or occupier of any dam mentioned in the fourth section of this act, who (if not already made and constructed) neglects or refuses to make and construct and keep in repair an apron of the description therein mentioned, shall pay a penalty of two dollars per day for every day of such neglect; and such penalty shall be recoverable before any two Justices of the Peace for the county in which the offence has been committed, on the oath of two credible witnesses; and if not paid, shall be levied by distress and sale of the goods and chattels of the offender, by a warrant under the hand and seal of such Justices, or one of them, and shall be paid to the treasurer of the municipal corporation having jurisdiction in the locality where such dam is erected, for the general uses of the municipality." (*Ib.* s. 7.)

MILL-DAMS IN SPECIFIED PLACES. — *County of Huron.* — "Subject to the provisions of the Fishery Act, the owner or occupier of every dam or weir erected on any river or stream in any of the townships of Williams, McGillivray, Stephen, Hay, Stanley, Goderich, Colborne, Hullet, McKillop, Tuckersmith, Hibbert, Logan, Fullarton, Usborne, Biddulph, Blanchard, Downie, including the Gore of Ellice, North East Hope, and South East Hope, or any other tracts of land which on the twenty-ninth day of March, one thousand eight hundred and forty-five, constituted the then district of Huron, shall, if the same has not been already done, construct and maintain, and if constructed shall maintain and keep in repair, a good and sufficient apron to such dam or weir, at least twenty-eight feet wide (if the dam or weir be of greater width, and if not, then of the same width as the dam or weir) and at least eight feet in length for every foot rise of such dam or weir, under a penalty of one dollar for each day during which the requirements of this section are not complied with; and such penalty shall be recoverable before any two Justices of the Peace for

the county in which the offence has been committed, on the oath of one credible witness; and if not paid, may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such Justices or either of them; one moiety of such penalty shall belong to Her Majesty, for the public use of the province, and the other moiety to the prosecutor." (*Ib.* s. 8.)

River Moira.—"Subject to the provisions of the Fishery act, the owner or occupier of any dam on the river Moira or its tributaries, in the county of Hastings, on which lumber is floated to market, shall construct and maintain, and if constructed shall maintain and keep in repair, a good and sufficient apron to such dam, at least thirty-two feet in width (if the dam be of that or of greater width, and if not, then of the width of the dam) and at least five feet in length for every foot rise of such dam; and the height of the dam at the place where the apron is constructed shall be at least two feet lower than the top of the said dam at any other place (unless it occupy the whole width thereof as aforesaid); but if the rise of the dam be less than four feet, the height of the dam at the place where the apron is constructed shall not exceed one half its height at any other place." (*Ib.* s. 9.)

"Every such apron must be constructed on the main channel of the stream, and its highest part shall be one foot below the level of the dam at the place where it joins the same, under a penalty of twenty-five cents for each day the requirements of this and the next preceding section are not complied with." (*Ib.* s. 10.)

The said penalty on the complaint may be recovered and enforced, on the oath of one credible witness other than the informer, before any two Justices for the county; one half penalty to Her Majesty and the other to the prosecutor. If not forthwith paid, it shall, by warrant of such Justices or any one of them, be levied by distress and sale of the goods and chattels of the offender. (See *ib.* s. 11.)

MARRIAGE—SOLEMNIZATION OF.

MINISTERS OF ANY DENOMINATION MAY SOLEMNIZE MARRIAGE.—"The ministers and clergymen of every church and religious denomination in Upper Canada, duly ordained and appointed according to the rites and ceremonies of the churches or denominations to which they respectively belong, and resident in Upper Canada, may, by virtue of such ordination or appointment, and according to the rites and usages of such churches or denominations respectively, solemnize the ceremony of marriage between any two persons not under a legal disqualification to contract such marriage." (Con. Stat. U. C. c. 72, s. 1.)

NO MINISTER TO SOLEMNIZE MARRIAGE UNLESS AUTHORIZED BY LICENSE, OR AFTER PUBLICATION OF BANNS.—No minister or clergyman shall celebrate the ceremony of marriage unless authorized to do so by license under the hand and seal of the Governor, or unless the banns of marriage have been openly proclaimed in an audible voice on three separate Sundays, with the number of such proclamation, as being first, second and third. (See *ib.* s. 2.)

NO VALID OBJECTION, THAT IT WAS NOT IN A CHURCH OR CHAPEL.—"It shall not be a valid objection to the legality of a marriage, that the same was not solemnized in a consecrated church or chapel, or within any particular hours." (*Ib.* s. 3.)

"Every clergyman or minister who celebrates a marriage in Upper Canada, shall, if required at the time of the marriage by either of the parties thereto, give a certificate of the marriage under his hand, specifying the names of the persons married, the time of the marriage, and the names of two or more persons who witnessed it, and specifying also whether the marriage was solemnized pursuant to license or after publication of banns; and the clergyman or minister may demand twenty-five cents for the certificate from the person requiring it." (*Ib.* s. 4.)

MINISTER TO ENTER MARRIAGES IN A BOOK, AND TO MAKE A YEARLY RETURN TO THE REGISTRAR OF THE COUNTY.—"Every clergyman or minister shall, immediately after he has solemnized a marriage, enter in a book, to be kept by him for the

purpose, a true record of the marriage; and shall, on or before the first day of February in every year, return a certified list of all marriages by him solemnized during the year ending on the thirty-first day of December next preceding to the registrar of the county in which the marriages have taken place; and shall, at the time of making the return, pay or transmit to the registrar one dollar as his fee thereon." (*Ib.* s. 5.)

"In case of the death or removal of a minister or clergyman before making his annual return, his successor or any other person having the legal custody of the book referred to in the fifth section, shall return to the registrar a certified copy of all marriages therein recorded, and the registrar shall record the same as if the return had been made by the minister or clergyman who celebrated the marriages." (*Ib.* s. 10.)

FINES FOR NEGLECTING TO RETURN CERTIFIED LIST.—"Every clergyman, minister, clerk, secretary, or other person, who in any year refuses or neglects to return the certified list required of him by this act on or before the first day of February, shall forfeit for every day's delay after that day the sum of four dollars, which sum shall be recoverable with costs before any magistrate of the county in which the person resides, and shall be applied according to law." (*Ib.* s. 12.)

MILITIA.

The acts 27 Vic., c. 2, respecting the "service and non-service militia," and 27 Vic., c. 3, respecting the "volunteer militia," are the consolidated acts that at present govern the militia force of the province; but, from their extent and liability to change, even any extended abstract of them, in a work of this limited size, is inexpedient.

THE MILITIA.—The Governor is (by 27 Vic., c. 2, s. 1) by virtue of his office, commander-in-chief, and (s. 2) the militia consists of all the male inhabitants of the province of the age of 18 or upwards and under 60, not exempt or disqualified by law. The militia are (s. 3) divided into three classes, to be called respectively first class, second class, and third class service

men. First class are those of 18 but under 45, who are unmarried, or widowers without children; second class, those also between 18 and 45, who are married men or widowers with children; third class or "reserve," who are 45 but under 60.

Exemptions.—Section 4 enumerates the functionaries who are wholly and in certain cases exempt.

Divisions.—Each county in the province (by s. 5) constitutes a military division.

Enrolment.—The mode of enrolment in Upper Canada is (by s. 6) by the annual returns of the municipal assessors, commencing with 1864, who are required to add to their assessment roll a classified list, transmitting a copy of the same to the county clerk, who (s. 7) is required within fourteen days after receipt of such to prepare a militia roll classified as before mentioned and verified on oath before a Justice of the Peace. Such roll to be filed in the office of the clerk of the peace.

The service enrolment for Lower Canada is (s. 10) similarly provided for.

CALLING OUT MILITIA.—The commander-in-chief may (s. 17) call out the whole or any part thereof for actual service when in his opinion there is war, invasion, insurrection, or danger of any of them.

JUSTICE OF THE PEACE REQUIRED TO BILLET (s. 70).—The commanding officer of any troops on march shall require a Justice of the Peace to billet—such Justice being required immediately to do so and to facilitate their march; and the inhabitants are bound to receive them.

BILLETING ALLOWANCE (s. 71)—Officers are not obliged to pay, but householders on whom non-commissioned officers and privates are billeted will be paid a daily rate of 10 cents for each man, for each cavalry soldier and his horse at the rate of 25 cents. Every four days the officer receiving the men's pay shall out of the amount thereof first pay these accounts.

NO JUSTICE BEING AN OFFICER TO BILLET OR QUARTER TROOPS (s. 71).—No Justice of the Peace having any military office or commission, shall, directly or indirectly, be concerned in billeting any of the men under his immediate command.

JUSTICE MAY REQUIRE PERSONS TO FURNISH CARRIAGES, &C., FOR TROOPS (s. 76.)—When troops are cantoned any Justice of the Peace, on receiving an order from the commanding officer, shall issue his warrant to persons possessed of carriages, horses, or oxen, for such number as may be needed; and if after such warrant any owner refuses, then such may be impressed for the service, and be paid for at the usual rate of hire.

BOATS, RAILWAYS, &C. (s. 77).—In cases of emergency, any Justice of the Peace, of and in the locality, may also issue his warrant for railway cars, engines, boats, &c., in the same way.

PENALTIES UNDER THIS ACT HOW RECOVERABLE (s. 95).—Penalties are recoverable with costs on the evidence of a credible witness on complaint or information before one Justice of the Peace to the amount of ten dollars, if over ten dollars before two Justices; and (by s .96) in case of non-payment, by imprisonment.

BONDS TO THE CROWN UNDER THIS ACT (s. 104).—Bonds to the Crown under this act may be entered into before any Justice of the Peace.

THE VOLUNTEER MILITIA.—The Governor is (by 27 Vic. cap. 8, s. 1) also, by virtue of his office, commander-in-chief; and (s. 2) may raise a volunteer force not exceeding 35,000 men.

UNIFORM (s. 12).—"The uniform, clothing, &c., of volunteers are exempt from seizure. Each non-commissioned officer or man who fails to keep such in proper repair, or who may wear the same on other occasions than when on military duty, shall incur a penalty for each offence of five dollars."

VOLUNTEERS DESTROYING PROPERTY (s. 44).—"If any person pawns, destroys, sells or damages, or negligently loses any property or thing issued to him or in his possession as a volunteer, the value thereof shall be recoverable from him with costs, besides being liable to a penalty not less than five dollars nor more than twenty dollars, with or without imprisonment not exceeding six months.

PERSONS BUYING, &c. (s. 45)—"Any person knowingly buying, or having in his possession, or keeping without satisfactorily accounting for, any arms, clothing, &c., being the property of the crown, shall be liable to a penalty of not more than fifty dollars, nor less than twenty-five dollars, and to imprisonment not exceeding six months, with or without hard labour.

DAMAGING TARGETS OR BUTTS, &c. (s. 46).—"Any person wilfully damaging any butt or target, or who searches for bullets, or disturbs the soil forming such butt or target, is liable to a penalty not exceeding twenty dollars, with or without imprisonment.

MINORS AND APPRENTICES—OFFENCES RELATING TO.

The term "Apprentice" is derived from the French word *apprendre*, to learn, and is understood to be a person under twenty-one years of age bound by an indenture to any master mechanic, farmer, or other person carrying on a trade or calling, for a term not to exceed beyond the minority of the apprentice.

COMPLAINTS BY APPRENTICES AGAINST MASTERS.—"Any Justice of the Peace, mayor or police magistrate, on complaint made before him on oath by an apprentice against his master for refusing him necessary provisions, or for misusage, cruelty, or ill-treatment, shall summon the master to appear before him to answer the complaint, and on conviction shall levy on the offender a fine not exceeding twenty dollars, and issue a warrant of distress to collect the same and the costs; and in default of satisfaction of the distress, shall imprison the offender in any common gaol for a term not exceeding one month, unless the fine and costs be sooner paid." (Con. Stat. U. C. c. 76, s. 9.)

BY MASTERS AGAINST APPRENTICES.—"Any Justice, mayor or police magistrate shall also, on complaint of a master against his apprentice for refusing to obey his commands, or for waste or damage to property, or for any other improper conduct, cause the apprentice to come before him, and shall hear and

determine the complaint, and, on a conviction, order such apprentice to be imprisoned in a common gaol or house of correction for a term not exceeding one month." (*Ib.* s. 10.)

APPRENTICE DESERTING HIS MASTER'S SERVICE.—"In case any apprentice absents himself from his master's service or employment before the time of his apprenticeship expires, he may at any time thereafter, if found in Upper Canada, be compelled to serve his master for so long a time as he so absented himself, unless he makes satisfaction to his master for the loss sustained by such absence." (*Ib.* s. 11.)

HOW COMPLAINTS MAY BE HEARD.—"In case an apprentice refuses to serve as above required, or to make such satisfaction to his master, or to obey the lawful commands of his master, or in any other way refuses or neglects to perform his duty to his master, and if the master, or his overseer or agent, complains on oath to a Justice of the Peace, mayor, or police magistrate, either in the county, city or town where the master resides, or in any county, city or town where the absconding apprentice is found, such Justice, mayor or police magistrate shall, by warrant under his hand and seal, cause the apprentice to be apprehended and brought before him, or before some other Justice of the Peace; and such Justice upon hearing the complaint shall determine what satisfaction shall be made by the apprentice to his master; and in case the apprentice does not give or make such satisfaction immediately, or in case the satisfaction be of such a nature as not to admit of immediate performance, if he does not give sufficient security to make such satisfaction, then the Justice, mayor, or police magistrate shall commit the apprentice to the common gaol or house of correction of the county, city or town, for any time not exceeding three months; but such imprisonment shall not release the apprentice from his obligation to make up the lost time to his master." (*Ib.* s. 12.)

LIMITATION OF PROCEEDINGS.—"Where the apprentice has not left Upper Canada, or having left it has returned thereto, the master shall not proceed against him under this act, except

within three years next after the expiration of the term for which the apprentice contracted to serve, or next after his return, as the case may be." (*Ib.* s. 13.)

PENALTY FOR HARBOURING ABSCONDING APPRENTICES.—"Any person who knowingly harbors or employs an absconding apprentice, shall pay to the master of the apprentice the full value of the apprentice's labor, and such value shall be what the master would have received from the labor and service of the apprentice if he had continued faithfully in his master's service; and the master may recover the same in any court having jurisdiction where the apprentice has been employed, or where the master resides." (*Ib.* s. 14.)

APPEAL.—"Either party may appeal from the decision of a Justice, mayor or police magistrate under this act, in manner provided for by the act respecting appeals in cases of summary conviction." (*Ib.* s. 16.)

JURISDICTION.—"The court of Quarter Sessions shall have a concurrent primary jurisdiction over offences committed against this act." (*Ib.* s. 17.)

"When that court is called upon to adjudicate in any matter arising under this act, it shall, in addition to the other powers of the court, have power, in any case where it appears necessary for the full administration of justice, to annul the apprenticeship, and to compel the parties to the indenture of apprenticeship to deliver the same up to be cancelled, and the court may make such further order as the circumstances require." (*Ib.* s. 18.)

APPLICATION OF FINES.—"All fines imposed and collected under this act shall be paid to the chamberlain of the city, or to the treasurer of the county or town respectively where the offence was committed." (*Ib.* s. 19.)

MISDEMEANOR.

DEFINED.—The word "misdemeanor" in its broad sense is applied to all those crimes and offences for which the law has not provided a particular name, and which are punishable,

according to the degree of the offence, by fine or imprisonment, or both. In its more confined sense it is used to denote an indictable offence less than felony, and which (unless specially provided for by the act of parliament creating the offence) is not the subject of the summary jurisdiction of the Justices. Every attempt to commit a felony or misdemeanor, whether a statutable or a common law misdemeanor, or to incite another person to the commission of an indictable offence, whether felony or misdemeanor—unless, as for instance, in attempt to commit murder,—the statute has made the attempt a felony.

DEFENDANT IN MISDEMEANOR NOT ALLOWED TO POSTPONE TRIAL BY IMPARLANCE IN THE QUEEN'S BENCH OR COMMON PLEAS.—"Persons prosecuted in the courts of Queen's Bench or Common Pleas, by information there filed, or by indictment there found, or removed into such court, appearing either in person or by attorney, such defendant shall not imparl to a following term, but shall plead or demur thereto within four days: in default, judgment may be entered for want of plea." (Con. Stat. U. C. c. 108, s. 1.)

TIME MAY BE ALLOWED UPON CAUSE SHOWN.—The court, on sufficient cause shewn for that purpose, may allow further time. (See *ib.* s. 2.)

TRAVERSE ABOLISHED.—It is provided that no person prosecuted shall traverse or postpone trial; but if the court, on application, is of opinion that further time ought to be allowed, it may adjourn the trial, binding over the prosecutor and the witnesses to attend. (See *ib.* s. 3.)

DELAY OF TRIAL.—"In crown prosecutions for misdemeanor not brought to trial in twelve months after plea of 'not guilty,' the court, after twenty days' notice of application has been given to the attorney or solicitor-general, may make an order authorizing the defendant to bring on the trial, unless a *nolle prosequi* be entered to such prosecution." (*Ib.* s. 4.)

MUTINY.

Nothing contained in the criminal law of Canada shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces. (See Con. Stat. C. c. 90, s. 2.)

MURDER.

DEFINITION.—Murder is defined, or rather described, by Sir Edward Coke to be "when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the King's peace, with malice aforethought, either expressed or implied."

MALICE.—Malice aforethought, by which is meant premeditated hatred of the deceased or destructive intention, is the great criterion by which murder is distinguished from every other kind of homicide, and may be either expressed or implied. Express malice is not deliberate intention to take away the life of another, which is manifested by external signs; by lying in wait, menances, former grudges, or concerted schemes, to do him personal harm. This description takes in the case of duelling. If one kill another in a deliberate duel, under provocation of charges against his character, however grievous, it is murder in him and in his second, and also in the second of the deceased; and the bare incitement to fight, though under such provocation, is a high misdemeanor. If two or more come together to do an unlawful act, of which the consequence may be bloodshed,—as to maltreat a person, commit a riot, or rob a house, and one of them kill a man, it is murder in them all, because of the unlawful act,—the evil intended aforethought.

Implied malice is that inference which arises from the nature of the act, though no direct malice can be proved; as where a man deliberately poisons another, the law presumes malice, though no particular enmity can be established. So, too, in a deliberate duel, it is no answer to a charge of murder, as Justice Patteson told the jury, to say that it was done solely to vindicate reputation, if time has intervened for reflec-

tion. Malice will be inferred, though no evidence is adduced of particular ill-will towards the deceased. Again: if a master refuse his apprentice necessary food, or treat him with such continued harshness and severity that his death is occasioned thereby, the law will imply malice, and the offence will be murder. So, if a prisoner die by the cruelty or neglect of the gaoler, the party offending is criminal in the same degree.

If a man kill another suddenly, without a considerable provocation, the law implies malice; but if the person provoked had unfortunately killed the other, by beating him in such a way as shewed only an intent to chastise and not to kill him, the law so far considers the provocation of contumelious behaviour as to adjudge it only manslaughter, and not murder.

If one, intending to commit a felony, undesignedly kill a man, it is murder. So, if a person give a woman with child a potion to procure abortion, and it operate so violently as to kill the mother, this is murder in the person who gave it.

If two persons incite each other to commit self-murder together, and the means employed to produce death take effect upon one only, it is murder in the survivor.

STATUTE.—"Every person guilty of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (Con. Stat. C. c. 91, s. 2.)

POISONING, &C., WITH INTENT TO MURDER.—"Any person who administers to, or causes to be taken by any person, any poison or other destructive thing, or stabs, cuts, or wounds any person, or by any means whatsoever causes any bodily injury dangerous to life to any person, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and shall suffer death." (*Ib.* s. 5.)

FELONIOUS ATTEMPT.—"Any person who attempts to administer to any person any poison or other destructive thing, or shoots at any person, or by drawing a trigger, or in any

other manner attempts to discharge any kind of loaded arms at any person, or attempts to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury be effected, be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years."* (*Ib.* s. 6.)

RESCUE OF MURDERERS.—"If any person by force sets at liberty, or attempts to rescue or set at liberty, any person out of prison, who has been committed for or found guilty of murder, or rescues or attempts to rescue any person convicted of murder going to execution or during execution, such offender is guilty of felony, and shall suffer death; and any accessory before the fact to any such offence is guilty of felony, and shall suffer death." (Con. Stat. U. C. c. 97, s. 4.)

NUISANCE.

A public or common nuisance is such an inconvenient or troublesome offence as annoys the whole community in general, and not merely some particular person; and therefore this is indictable.

The existence of the matter as a *public* nuisance depends on the number of persons annoyed. A nuisance near a highway, whereby the air thereabouts is corrupted, is a public nuisance. Making great noises, or keeping dogs which make noises, in the night, is said to be indictable. So the keeping of hogs in a town is a nuisance by statute (2 W. & M. sess. 2, c. 8, s. 20) and at common law. If a noxious trade is already established in a place remote from habitations and public roads, and afterwards houses are built or roads made in the neighbourhood, the party is entitled to continue his trade, for it was legal before the erection of the houses and making of the road.

* Endangering the life of any person by setting fire to the building or vessel containing such person, constitutes the capital felony of "arson," already treated of above, under that head. (*Ante*, p. 141.)

No length of time will legitimatize a nuisance, and it matters not how long the practice has prevailed.

All nuisances may be classed under one or other of the following heads:—Trades producing noxious and offensive smells, carried on in a populous neighbourhood, as tanneries, breweries, slaughter-houses, gas works, &c.; corrupting and fouling the public waters, as reservoirs, streams, &c.; acts tending to produce public disorder, as common rope-dancing, and common gaming-houses (see article "Gaming," *ante*, p. 295); acts of public indecency, as bathing in a public place, or indecent exposure in a public place, as in an omnibus (but such act must have been seen by many persons: see article "Public Morals," *post*); keeping disorderly inns, which collect a crowd of drunkards and rioters, to the disturbance of the neighbourhood; keeping bawdy-houses; keeping dangerous animals, as keeping a fierce bull in a field through which there is a footway; exposing a person having a contagious disease, as small-pox, in a public place; mixing unwholesome ingredients in provisions, as chalk or alum in bread, &c.

Disorderly Inns.—"The mayor or police magistrate of a town or city, with any one Justice of the Peace having jurisdiction therein, or the reeve of a township or village, with any one Justice of the Peace having jurisdiction in the township or village, upon complaint made on oath to them, or one of them respectively, of riotous or disorderly conduct in any inn or tavern, ale or beer house, situate within their jurisdiction, may summon the keeper of the inn, tavern, ale or beer house, to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or convict the keeper of having a riotous or disorderly house, and annul his license, or suspend the same for not more than sixty days, with or without costs, as in their discretion may seem just." (Con. Stat. U. C. c. 54, s. 264.)

Bawdy House or other disorderly House.—Any person acting or appearing as master or mistress, or as having the care or management of any such house, or being an inmate or habitual frequenter of any disorderly house, house of ill-fame,

or bawdy house, may be charged before any Justice with being guilty of any of the above offences, and may be by said Justice remanded before the nearest Police Magistrate, in like manner in all respects as a Justice is authorised to remand a party accused for any indictable offence to a court of competent jurisdiction.

"Where any person is charged before any Justice or Justices of the Peace with any offence mentioned in this act, and in the opinion of such Justice or Justices the case may be proper to be disposed of by a recorder, or by an inspector and superintendent of the police, or by a police magistrate, as herein provided, the Justice or Justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the recorder, or before the inspector and superintendent of the police of the nearest city, or before the nearest police magistrate, in like manner, in all respects, as a Justice or Justices are authorized to remand a party accused under the general act respecting the duties of Justices of the Peace out of sessions in like cases." (Con. Stat. C. c. 105, s. 18.)

"The council of every county, city, and town may pass by-laws for suppressing tippling houses and houses of ill-fame."* (*Ib.* c. 54, s. 282.)

Mischievous Dogs.—A mastiff going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to Her Majesty's subjects, seems to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large.

And it was ruled that if any dog has once bitten a man, and the owner, having notice thereof, keeps the dog and lets him go about or lie at his door, an action will lie against him at the suit of the person bitten, though it happened by his treading on the dog's toes; for it was occasioned by his not killing the dog on the first notice, and the safety of the Queen's subjects ought not afterwards to be endangered.

* It is also clearly agreed that keeping a bawdy house is a common nuisance, as to endanger the public peace by drawing together dissolute and debauched persons. As such, it is indictable.

BY-LAWS AGAINST NUISANCES IN CITIES, TOWNS, AND INCORPORATED VILLAGES.—"The council of every city, town, and incorporated village may respectively pass by-laws for the following purposes:—

"For preventing or regulating the bathing or washing the person in any public water in or near the municipality;

"For preventing and abating public nuisances;

"For preventing or regulating the construction of privy vaults;

"For causing vacant lots to be properly enclosed;

"For preventing or regulating the erection or continuance of slaughter-houses, gas-works, tanneries, distilleries or other manufactories or trades which may prove to be nuisances;

"For preventing the ringing of bells, blowing of horns, shouting, and other unusual noises, in streets and public places;

"For preventing or regulating the firing of guns and other fire-arms; and the firing or setting off of fire-balls, squibs, crackers or fire-works; and for preventing charivaries and other like disturbances of the peace;

"For preventing immoderate riding or driving in highways or streets, and for preventing the leading, riding, or driving of horses or cattle upon sidewalks or other places not proper therefor;

"For preventing persons in streets or public places from opportuning others to travel in or employ any vessel or vehicle, or go to any tavern or boarding-house, or for regulating persons so employed;

"For regulating the interment of the dead, and for preventing the same taking place within the municipality." (Con. Stat. U. C. c. 54, s. 294.)

IN POLICE VILLAGES.—"The trustees of every police village shall execute and enforce the regulations following:—

"No person shall throw or cause to be thrown any filth or rubbish into any street, lane, or public place, under a penalty of one dollar, and a further penalty of two dollars for every

week he neglects to remove the same, after being notified to do so by the inspecting trustee or some other person authorised by him." (*Ib.* s. 312.)

In Cities and Towns.—"The council of every city and town may respectively pass by-laws for compelling persons to remove the snow, ice and dirt from the roofs of the premises owned or occupied by them, and also to remove the same from the side-walks, street or alley in front of such premises, and for removing the same at the expense of the occupant in case of his default." (*Ib.* s. 297.)

OUTLAWRY.

Outlawry is a punishment inflicted on a person for contempt and contumacy, in refusing to be amenable to the justice of that court which hath lawful authority to call him before them; and its process may issue in a prosecution for any crime whatever. Outlawry in felony is of itself an attainder, and subjects the party to such an award thereupon, to be made by the court where he is brought, as is provided for the offence for which he is indicted and outlawed; for the law interprets the party's absence as a sufficient evidence of his guilt, and without requiring further proof or satisfaction, accounts him guilty of the fact, on which ensues absolute forfeiture of his whole estate real and personal; indeed, many men who never were tried have been executed upon the outlawry. (Dickinson, *Quarter Sessions*, 985.)

Sessions have authority in.—"The courts of General Quarter Sessions of the Peace in the several counties of Upper Canada shall be in the place and stead of the county courts of England, as far as respects any purpose of outlawry, or any proceedings therein." (Con. Stat. U.C., c. 107, s. 1.)

Capias or Bench Warrant.—"The process upon every indictment to bring the person indicted into court shall be a capias in the usual form, issued from the court before which the indictment is found, directed to the sheriff of the county wherein the said court is sitting, commanding him to take the

person indicted and to bring him before the said court; and if the person cannot be taken during the sitting of the said court, then so soon after as he can be taken to bring or cause him to be brought before some Justice of the Peace of the county, to be dealt with according to law." (*Ib.* s. 2.)

WHEN RETURNABLE.—"The capias shall be made returnable in the court of Queen's Bench or Common Pleas, on the first day of the term next after the sitting of the court before which the indictment is found; and if upon the return of the writ the sheriff of the said county returns that the person therein named is not to be found in his county, then an alias writ of capias shall issue from the court of Queen's Bench or Common Pleas, under the seal of the court, tested of the first day of the term, if in term time, or on the last day of the preceding term, if in vacation, returnable before such court on the first day of the next ensuing term. (*Ib.* s. 3.)

IF RETURN NON EST.—If to the said writ of alias capias the sheriff returns that the person therein named is not to be found in his county, then upon motion in court, or before a Judge in vacation, a writ of exigent shall issue under the seal of the court, tested on the first day of the term, if in term time, or on the last day of the preceding term, if in vacation, directed to the sheriff of the county into which the said writs of capias issued; which writ of exigent shall be returnable on the first day of the fifth term from that in which the same is awarded, and may be in the form following, that is to say: (*Ib.* s. 4.)

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the —— County—Greeting:

We command you, that you cause A. B., late of —— to be demanded from General Quarter Sessions to General Quarter Sessions in your county until, according to the law of Upper Canada, he be outlawed if he doth not appear, and if he doth appear, then that you take him and cause him to be safely kept, so that you may have his body before us, in our court of ——, at Toronto, on the —— day of —— term next (*the return of the writ*), to answer to a certain bill of indictment found against him for —— (*whatsoever the crime may be*) and have then there this writ.

Witness, the Honorable —— Chief Justice, (*or* Senior Judge) at Toronto, this —— day of ——, in the —— year of our reign.

HOW SHERIFF TO PROCEED.—"The sheriff to whom the said writ of exigent issues shall, at three successive courts of General

Quarter Sessions of the Peace, to be holden in and for his county, before the return of the said writ, in open court, immediately after the charge to the grand jury, make or cause to be made proclamation of the person named in the said exigent, requiring him to render himself to answer to the said indictment." (*Ib.* s. 5.)

RETURN THEREOF.—If the person so demanded does not appear, the sheriff to whom the said writ of exigent is directed, shall endorse upon the said writ of exigent a return in the following form: (*Ib.* s. 6.)

By virtue of the within writ, to me directed, at the court of General Quarter Sessions of the Peace, held at ——, in and for the county of ——, on ——, the —— day of ——, in the year within written, the within named A. B. was a first time demanded, and did not appear; and at the court of General Quarter Sessions of the Peace, held at —— aforesaid, for the county aforesaid, on ——, the —— day of ——, in the year aforesaid, (*or as it may be*) the said A. B. was a second time demanded, and did not appear; and at the court of General Quarter Sessions of the Peace held at —— aforesaid, for the county aforesaid, on ——, the —— day of ——, in the year aforesaid (*or as it may be*) the said A. B. was a third time demanded, and did not appear: therefore the said A. B., according to the law of Upper Canada, is outlawed.

The answer of

C. D. Sheriff.

WRIT OF PROCLAMATION.—In all criminal cases wherein any writ of exigent is awarded under this act, against any person described in the indictment, as being lately conversant in any other county of Upper Canada than that in which the said exigent is so awarded, a writ of proclamation shall be awarded and made out of the same court, or by order of a Judge in vacation, having day of teste and return as the writ of exigent has, and shall be directed and delivered to the sheriff of the county in which the person indicted is in the said indictment described as having lately been conversant; which writ of proclamation may be in the following form: (*Ib.* s. 7.)

Victoria, &c., &c., &c.

To the Sheriff of the —— county—Greeting:

Whereas by a writ, we lately commanded our Sheriff of the county of —— that he should cause A. B. late —— to be demanded from General Quarter Sessions to General Quarter Sessions, until, according to the law of Upper Canada, he should be outlawed if he did not appear, and if he did appear, then that he should take him and cause him to be safely kept, so that he might have his body before us in our court of ——, at Toronto, on the —— day of —— term then next, to answer to a certain bill of indictment found

against him for ——: therefore, we command you, that in pursuance of the statute in that behalf, you cause the said A. B. to be proclaimed upon three several days according to the form of the said statute, that he render himself to our sheriff of ——, so that he may have his body before us, at the time and place aforesaid, to answer to the said indictment, and have there then this writ.

Witness, the Honorable ——, at Toronto, this —— day of ——, in the —— year of our reign.

And the sheriff to whom the said writ of proclamation issues shall, at three successive courts of General Quarter Sessions of the Peace before the return of the said writ, in open court, on the first day of the said court, make or cause to be made proclamation of the person named in the said writ of proclamation, according to the command of the said writ. (*Ib.* s. 7.)

RETURN TO.—When the said writ of proclamation has been executed as aforesaid, the sheriff to whom the same is directed shall endorse thereon a return in the following form: (*Ib.* s. 8.)

By virtue of the within writ to me directed, I caused the within named A. B. to be proclaimed three several days, according to the effect of the within mentioned statute, as it is within commanded me.

The answer of C. D., Sheriff.

NON-APPEARANCE.—"After the return of the said writ of exigent, and of the writ of proclamation, when required to be issued in manner aforesaid, the person against whom the same issued shall, in default of appearance, incur and suffer the same forfeiture and disabilities, and the like process shall be had thereupon, as in cases of outlawry for the same offences by the criminal law of Upper Canada, as it stood immediately before this act takes effect." (*Ib.* s. 9.)

IN HIGH TREASON.—"In case of an indictment being found by a grand jury, at any court of competent jurisdiction in Upper Canada, against any person for high treason, misprision of treason, or treasonable practices, and in case the sheriff makes return to any warrant or capias issued thereupon that such person is not to be found in his county, the Governor, by and with the advice and consent of the Executive Council, may, immediately upon the making of such return, issue a proclamation, to be published not less than six weeks in the *Canada Gazette*, calling upon and requiring the person against whom

such indictment has been found, to surrender himself to the custody of the sheriff of the county within which the court was held, before which such indictment was found, by a day to be named in the said proclamation, such day not being less than three months from the first publication of such proclamation in the *Gazette;* and if such person does not, by the day in such proclamation named, surrender himself to the custody aforesaid, and submit to justice, then and in such case, after the day in such proclamation named, he shall stand and be adjudged attainted of the crime expressed and set forth in such indictment, and shall suffer and forfeit, as a person attainted of such crime by the laws of the land ought to suffer and forfeit." (*Ib.* s. 10.)

"The Justices of every court of oyer and terminer and general gaol delivery, at which any such indictment may be found as aforesaid, shall, upon the return of the sheriff that the person named in such indictment is not to be found within his county, certify the said indictment, and the proceedings thereon, into the court of Queen's Bench or Common Pleas; and every such sheriff, at the expiration of the time limited in such proclamation, shall make a return to the said court of Queen's Bench or Common Pleas of the name of the person, who being named in any such proclamation as aforesaid, has not surrendered himself to the custody of the said sheriff, pursuant to the exigency of such proclamation; and the said court of Queen's Bench or Common Pleas shall, during the term in or before which such last mentioned return is made, direct judgment of attainder against such person to be entered on record." (*Ib.* s. 11.)

If party surrender.—"If any person against whom any such judgment of attainder has been entered does within three months next after the day of entry of such judgment surrender himself to the custody of the sheriff of the county of York, and by the oath of two credible witnesses, establishes to the satisfaction of the said court of Queen's Bench or Common Pleas that such person was actually and *bonâ fide* prevented from surrendering himself, pursuant to the exigency of such proclamation, by reason of absence beyond seas, sickness or other inevitable necessity, then the said court may reverse the said

judgment of attainder, and transmit the indictment to any court of oyer and terminer to be held in and for the county wherein such indictment was found; and such person so surrendering shall be tried for the offence charged in such indictment in like manner as if no such judgment of attainder had been entered." (*Ib.* s. 12.)

PENALTIES, FINES AND FORFEITURES.

How to be appropriated.—"Every sum of money forfeited for or as the value of any property stolen or of any injury done (such value or amount to be assessed in each case by the convicting Justice or Justices), shall be paid to the party aggrieved if known, except where such party has been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty." (Con. Stat. C. c. 99, s. 122.)

If more than one Offender.—"When several persons join in the commission of the same offence, and upon conviction thereof each is adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only, and the corresponding sum forfeited by the other offenders shall be applied in the same manner as other penalties imposed by a Justice of the Peace are directed to be applied." (*Ib.* s. 123.)

Fines payable to Treasurer.—"In all cases not otherwise provided for, in which, by the criminal law of England in force in Upper Canada, the whole or any part of a fine or penalty imposed for the punishment of any offence is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of Upper Canada, such fine or penalty, or the part thereof so appropriated, shall, when received, be paid to the treasurer of the county or chamberlain of the city in which the conviction has taken place, to be appropriated to the purposes thereof, and accounted for in the same manner as the general rates and

assessments levied therein are applicable and accountable by law."* (Con. Stat. U. C. c. 118, s. 1.)

FINES PAYABLE TO THE RECEIVER GENERAL.—"Every fine and penalty imposed for the punishment of any offence prohibited by any statute having force of law in Upper Canada only, and for the appropriation of which fine and penalty no other provision is made, and any duty or sum of money, and the proceeds of any forfeiture by any such statute given to the crown, shall be paid into the hands of the Receiver General, and shall form part of 'The Consolidated Revenue Fund.'" (*Ib.* s. 2.)

FINES TO FORM JURORS' FUND.—"All fines and penalties imposed upon and levied in the several counties in Upper Canada not payable to the Receiver General or to any municipal corporation, and all fines upon jurors for non-attendance levied therein, shall be paid to the treasurers of each of the said counties respectively, and shall form part of the fund for the payment of petit jurors." (*Ib.* s. 3.)

PENALTIES,—HOW RECOVERABLE IN CERTAIN CASES.—Whenever any pecuniary penalty or forfeiture is imposed and no other mode be prescribed for the recovery thereof, such penalty or forfeiture shall be renewable with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself; and if no other provision be made for the appropriation of such penalty or forfeiture, one half thereof shall belong to the Crown and the other half shall belong to the private plaintiff. (See Con. Stat. C. c. 5, s. 6, sub. sec. 17.)

PERJURY.

DEFINITION.—Perjury at common law is defined to be a wilful false oath by one who, being lawfully required to depose the truth in any judicial proceeding, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not.

* In fact, all fines are to be paid to the treasurer of the county, unless there be special provision to the contrary.

EVIDENCE.—To support an indictment for perjury, the prosecutor must prove: 1, the authority to administer an oath; 2, the occasion of administering it; 3, the taking of the oath; 4, the substance of the oath; 5, the materiality of the matter sworn; 6, the introductory averments; 7, the falsity of the matter sworn; and, 8, the corrupt intention of the defendant.

WHO MAY ADMINISTER OATHS.—"In every case where an oath or affirmation is directed or authorized to be made before any court, person, or officer, such court, person, or officer shall have full power and authority to take and administer the oath or affirmation; and the wilful and corrupt making of any false statement on any such oath or affirmation shall be wilful and corrupt perjury, and the wilful and corrupt making of any false statement in any declaration required or authorized by the Consolidated Statute of Upper Canada shall be a misdemeanor punishable as wilful and corrupt perjury." (Con. Stat. U.C. c. 2, s. 15.)

BEFORE SURROGATE COURTS AND COMMISSIONERS.—The judges and registrars of the surrogate courts respectively shall have full power to administer oaths in matters and causes testamentary, and in all other matters in any of the said courts; and commissioners for taking affidavits in either of the superior courts of common law, or in the court of Chancery in Upper Canada, shall also have full power respectively to administer oaths in all matters and causes testamentary, and in all other matters in the said courts, to parties desirous of making affidavit or deposition before them respectively: any person who wilfully gives false evidence or who wilfully swears or affirms falsely in any affidavit or deposition before any of the said surrogate courts, or before any judge or registrar thereof, or before any commissioner as aforesaid, shall be liable to the penalties and consequences of wilful and corrupt perjury." (*Ib.* c. 16, s. 15.)

BEFORE DIVISION COURTS.—"All affidavits to be used in any of the division courts, or before any of the judges thereof, may be sworn before any county judge, or before the clerk or deputy clerk of the division court, or before any judge or commissioner for taking affidavits in any of the superior courts." (*Ib.* c. 19, s. 104.)

"In case any person, in any examination, wilfully and corruptly gives false evidence, or wilfully swears or affirms falsely in any matter where an oath, affidavit or affirmation is required or allowed in this act, he shall be liable to the penalties of wilful and corrupt perjury." (*Ib.* s. 105.)

FALSE DECLARATIONS UNDER THE MUNICIPAL ACT.—"The wilful and corrupt making of any false statement required or authorized by this act shall be a misdemeanor, punishable as wilful and corrupt perjury." (*Ib.* c. 54, s. 423.)

OUT OF UPPER CANADA.—"Any person who wilfully and corruptly makes any false affidavit out of Upper Canada before any chief Justice or other officer or functionary authorized to take the same under the Common Law Procedure Act, shall be deemed guilty of perjury, in like manner as if such false affidavit had been made in Upper Canada before competent authority; and he may be dealt with, indicted, tried, and, if convicted, be sentenced, and the offence may be laid and charged to have been committed in that county or place where he has been apprehended or is in custody." (*Ib.* c. 101, s. 9.)

IN MATTERS CONCERNING REVENUE.—"Upon all examinations and inquiries made by order of the Governor in council, for ascertaining the truth as to any fact relative to any matter concerning the collection or management of the revenue, or the accounting for the same, or the conduct of officers or persons employed therein, and upon like examinations and inquiries made by the collector of the customs, or by the chief officer employed in the collection and management of the revenue in or at any port, district or place, or by any person or officer authorized by the Governor in council to make such examinations and inquiries, any person to be examined as a witness shall deliver his testimony on oath, to be administered to him by the officer or person making such examination or inquiry, who shall administer the same; and any person wilfully making any false statement in any such examination upon oath, or upon any solemn affidavit or declaration substituted as aforesaid for an oath, whether such oath be required by this act or by any other law relating to the revenue, shall be deemed guilty

of wilful and corrupt perjury, or of a misdemeanor punishable in the same manner as wilful and corrupt perjury, and shall on conviction be liable to be punished accordingly." (Con. Stat. C. c. 16, s. 42.)

Form of Indictment.—"In any indictment for perjury, or for unlawfully, illegally, falsely, fraudulently, deceitfully, maliciously, or corruptly, taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, was taken, made, signed or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding either in law or equity, and without setting forth the commission or authority of the court or person before whom such offence was committed." (*Ib.* c. 99, s. 39.)

Subornation of.—"In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously or corruptly, to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient, whenever such perjury or other offence aforesaid has been actually committed, to allege the offence of the person who actually committed such perjury or other offence, in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully and corruptly, did cause and procure the said person the said offence in manner and form aforesaid to do and commit; and whenever such perjury or other offence aforesaid has not actually been committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered

unnecessary to be set forth or averred in the case of wilful and corrupt perjury." (*Ib.* s. 40.)

EVIDENCE.—"A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court whereat the indictment was tried, or among which such indictment has been filed, or by the deputy of such clerk or other officer, shall, upon trial of an indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same." (*Ib.* s. 71.)

PERJURY DEFINED—In every case where an oath or affirmation is directed or authorized to be made before any court, person or officer, such court, person or officer shall have full power and authority to take and administer the oath or affirmation; and the wilful and corrupt making of any false statement in any oath or affirmation shall be wilful and corrupt perjury, and the declaration required or authorized by any of the Consolidated Statutes of Upper Canada, shall be a misdemeanor punishable as wilful and corrupt perjury. (Con. Stat. U. C. c. 2, s. 15.)

THE OATH.—The word "oath" shall be construed as meaning a solemn affirmation, whenever the context applies to any person and case, by whom and in which a solemn affirmation may be made instead of an oath; and in every case where an oath or affirmation is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same, and to certify its having been made; and the wilful making of any false statement in any such oath or affirmation shall be wilful and corrupt perjury; and the wilful making of any false statement in any declaration required or authorized by any such act as aforesaid, shall be a misdemeanor punishable as wilful and corrupt perjury. (Con. Stat. C. c. 5. s. 6. sub. s. 13.)

EVIDENCE OF.—A certificate containing the substance and effect only (omitting the formal parts) of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court whereat the indictment was tried, or among which such indictment has been filed, or by the deputy of such clerk or other officer, shall, upon trial of an indictment for perjury, or subornation of perjury, be sufficient evidence of the trial of such indictment for felony or misdemeanor, without the signature or official character of the person appearing to have signed the same. (*Ib.* s. 71.)

IN CASES OF QUALIFICATION OF JUSTICES.—"If the statement in any oath, or in any declaration under oath, taken or made in pursuance of the requirements of this act, be false to the knowledge of the person making the same, such person shall be guilty of wilful and corrupt perjury, and subject to all the pains and penalties attendant on that offence." (Con. Stat. C. c. 100, s. 14.)

PETTY TRESPASSES.

PENALTY.—"Any person who unlawfully enters into, comes upon or passes through, or in any way trespasses upon any land or premises whatsoever, being wholly enclosed, and being the property of any other person, shall be liable to a penalty of not less than one dollar nor more than ten dollars for any such offence, irrespective of any damage having or not having been occasioned thereby; and such penalty may be recovered with costs in every case of conviction which may be had either on view or on confession of the party complained against, or on the oath of one credible witness; but nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, or to any case within the meaning of the twenty-eighth section of chapter ninety-three of the Consolidated Statutes of Canada respecting arson and other malicious

injuries to property."* (25 Vic. c. 22, s. 2; see article "Malicious Mischief," *ante*, p. 366.)

ARREST.—"Any person found committing any such trespass as aforesaid may be apprehended without a warrant by any peace officer, or by the owner of the property on which it is committed, or the servant, or any person authorized by him, and be forthwith taken to the nearest Justice of the Peace, to be dealt with according to law."* (Con. Stat. U. C. c. 105, s. 2.)

PROCEEDINGS UNDER THIS ACT.—"Except as herein otherwise provided, all proceedings under this act shall be subject to and in accordance with the provisions of the Consolidated Statutes of Canada, respecting *the duties of Justices of the Peace out of sessions in relation to summary convictions and orders*, which shall apply to cases arising under this act." (*Ib.* s. 3.)

JUSTICE OF THE PEACE NOT TO TRY TITLES TO LAND UNDER COLOUR OF THIS ACT.—"Nothing in this act contained shall authorize any Justice of the Peace to hear and determine any case of trespass in which the title to any land, or any interest therein or accruing thereupon, shall be called in question or affected in any manner howsoever; but every such case of trespass shall be dealt with according to law in the same manner in all respects as if this act had not been passed." (*Ib.* s. 4.)

RESERVATION OF POINTS OF LAW.

RESERVATION OF QUESTION.—"When a person has been convicted of treason, felony, or misdemeanor before any court of oyer and terminer, gaol delivery, or Quarter Sessions, including recorders' courts, the judge, recorder or Justices of the Peace before whom the case was tried, may, in his or their discretion, reserve any question of law which arose on the trial for the

* This section is substituted for Consol. Stat. U. C. c. 105, s. 1, which is repealed.

* A party convicted of trespass cannot be imprisoned until after the return of the distress warrant. (*Buckingdale* v. *Clissold*, York and Peel Sessions, 1865.)

consideration of the Justices of either of Her Majesty's superior courts of common law, and thereupon may respite execution of the judgment on such conviction, or postpone the judgment, until such question has been considered and decided; and in either case, the court at which the trial took place shall in its discretion commit the person convicted to prison, or take a recognizance of bail, with one or two sufficient sureties, in such sum as the court thinks fit, conditioned for his appearance at such time as the court directs, to receive judgment or to render himself in execution, as the case may be." (Con. Stat. U. C. c. 112, s. 1.)

CASE TO BE STATED.—"The judge, recorder, or chairman of the court of Quarter Sessions, shall thereupon state, in a case to be signed by such judge, recorder or chairman, the question or questions of law so reserved, with the special circumstances upon which the same arose; and such case shall be transmitted by such judge, recorder or chairman to one or other of the said superior courts on or before the last day of the first week of the term of such superior courts next after the time when such trial was had." (*Ib.* s. 2.)

POWER OF SUPERIOR COURT.—"The Justices of either of the superior courts to which the case may be transmitted as aforesaid shall hear and finally determine the said questions, and reverse, affirm or amend any judgment given on the indictment or inquisition on the trial whereof such questions arose, or shall avoid such judgment, or order an entry to be made on the record, that in the judgment of the said Justices the party convicted ought not to have been convicted, or shall arrest the judgment, or if no judgment has been given, shall order judgment to be given thereon at some future session of oyer and terminer or gaol delivery, or sessions of the peace or recorder's court, or shall make such other order as justice may require." (*Ib.* s. 3.)

JUDGMENT AND CONSEQUENCES.—"The judgment and order of the said justices shall be certified under the hand of the chief justice or senior judge of such court to the clerk of assize,

or to the clerk of the peace, or recorder's clerk, as the case may be, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of assize, or the clerk of the peace, or the recorder's clerk, as the case may be, in the form as near as may be, or to the effect mentioned in the schedule annexed to this act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted is; and the said certificate shall be sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, as so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment; or if the judgment has been reversed, avoided or arrested, the person convicted shall be discharged from further imprisonment, and the next court of oyer and terminer or gaol delivery, or sessions of the peace, or recorder's court, shall vacate the recognizance of bail, if any; or if the court below be directed to give judgment, such court shall proceed to give judgment at the next session." (*Ib.* s. 4.)

POUNDS AND POUND-KEEPERS—OFFENCES RELATING TO.

REGULATIONS FOR THE GOVERNMENT OF POUND-KEEPERS.—"Until varied, or other provisions are made by act of Parliament, or by by-laws of the municipality, the following regulations shall be in force:

Liability.—1. The owner of any animal not permitted to run at large by the regulations of the municipality shall be liable for any damage done by such animal, although the fence enclosing the premises was not of the height required by such regulations.

What Animals to be impounded.—2. If not previously replevied, the pound-keeper shall impound any horse, bull, ox, cow, sheep, goat, pig or other cattle, or any poultry distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same.

When Pound not safe. — 3. When pound is unsafe, the keeper may confine the animal in any enclosed place within the limits of his division.

Statement of demand to be made to Pound-keeper.—4. The person distraining and impounding shall, at the time or within twenty-four hours thereafter, deliver to the keeper duplicate statements in writing of his demand for damages against the owner (if any), not exceeding twenty dollars, done by such animal, at same time giving his agreement with a surety, if required, in the following form, or in words to the same effect:

FORM OF AGREEMENT WITH POUND-KEEPER.

"I (*or* we, *as the case may be*) will pay to the owner of the (*describing the animal*) by me (A. B.) this day impounded, all costs to which the said owner may be put in case the distress by me, the said A. B., proves to be illegal, or in case the claim for damages now put in by me, the said A. B., fails to be established."

Stray Cattle distrained.—5. If a horse, bull, ox, cow, sheep, goat, pig or other cattle be distrained by a resident of the township for straying within his premises, he may, instead of delivering to the pound-keeper, retain the animal in his own possession,—provided he makes no claim for damage done and gives due notice as provided hereafter.

If the Owner be known.—6. If the owner be known to him, he shall forthwith give him written notice of having taken up the animal; or

If unknown.—7. If the owner be unknown, notice in writing must be given within forty-eight hours to the township clerk, describing the color, age and natural and artificial marks.

Duty of Clerk thereon. — 8. The clerk on receiving such notice shall forthwith enter a copy thereof in a book kept for that purpose, and shall post the notice he receives, or a copy thereof, in some conspicuous place near his office, continuing for at least a week, unless the animal is sooner claimed by the owner.

If Animals are worth over ten dollars.—9. If animal or animals taken are to the value of ten dollars or more, the distrainer shall cause a copy of the notice to be published in a

newspaper published in the county, and if not one, then in the nearest adjoining county, once a week for three successive weeks.

Sale.—10. Notices for the sale of any animal impounded shall be given either by pound-keeper or person who impounded, within forty-eight hours; but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days after impounding.

Notice of Sale.—11. If the animal is a pig, goat or sheep, notices for sale are not to be given for one month; if a horse or other animal, not for two months.

12. Notices may be written or printed, to be affixed and continued for three successive days in three public places in the municipality; shall specify time and place at which the animal will be sold, if not sooner redeemed, together with penalty imposed by law (if any) claimed or decided, together with the lawful fees and charges of pound-keeper, also of the fence-viewers (if any), and expenses of the animal's keeping.

Keeper to feed impounded Cattle.—13. Every person who impounds or confines, or causes to be impounded or confined, any animal in any common pound or any enclosed place, shall daily furnish the animal with good and sufficient food, water and shelter, during the whole time that such animal continues impounded or confined.

May recover the value. — 14. Every such person who furnishes the animal with food, water and shelter may recover the value thereof from the owner, also a reasonable allowance for his time and trouble.

15. Value or allowance may be recovered with costs by summary proceedings, before any Justice of the Peace within the jurisdiction, in like manner as fines, penalties, &c., for the breach of any by-law, and enforced by a single Justice of the Peace; and when not otherwise fixed by law, adhering as closely as possible to the tariff of pound-keeper's charges that may be established by the by-laws of the municipality; or

16. The pound-keeper may enforce the remuneration to which he is entitled in manner hereafter mentioned.

Sale how effected, &c., and purchase money how applied.—17. If by affidavit it be proved before one of the Justices aforesaid to his satisfaction, that all the proper notices have been duly affixed and published as before prescribed, then if the owner does not replevy or redeem the animal within the time specified in the notices, or before the sale of such animal, the pound-keeper who impounded the animal, or if the person who took up the animal did not deliver such animal to the pound-keeper, but retained the same in his own possession, then any pound-keeper in the township, may publicly sell the animal to the highest bidder at the time and place mentioned in the aforesaid notice, and after deducting the penalty (if any) and all other charges, shall return any surplus to the original owner of the animal; but if not claimed by him within three months after the sale, the surplus in such case to be paid over to the treasurer of the municipality.

Disputes, how determined.—18. If the owner within forty-eight hours after delivery of such statement disputes the amount of damages so claimed, the amount shall then be decided by the majority of three fence-viewers of the municipality, one to be named by the owner, another by the party distraining and claiming the damages—the third by the pound-keeper.

Fence-viewers to view and appraise damages.—19. Such fence viewers within twenty-four hours after notice of their appointment to view the fence and the ground upon which the animal was found doing damage, and determine whether the fence was a lawful one; if a lawful fence, then they shall appraise the damages, and within twenty-four hours deliver to the pound-keeper a written statement, signed by at least two of them, of their appraisement, as well as their lawful fees and charges.

Penalty for neglect by Fence-viewers.—20. Any fence-viewer neglecting his duty as arbitrator shall incur a penalty of two dollars, to be recovered for the use of the municipality, by summary proceeding before a Justice of the Peace, upon complaint of party aggrieved, or the treasurer of the municipality.

Proceedings where Viewers decide against the legality of a Fence. — 21. If the fence-viewers decide that the fence was not a lawful one, they shall certify the same in writing, with a statement of their fees and charges, to the pound-keeper, who, upon payment thereof, shall deliver the animal to the owner if claimed before the sale, but if not claimed, or if such fees and charges be not paid, after due notice as aforesaid, the animal shall be sold.

Liability of Pound-keeper refusing to feed animal impounded. — 22. If Pound-keeper refuses or neglects to find, provide and supply the animal with good and sufficient food, water and shelter, as aforesaid, he shall for every day of such refusal or neglect forfeit not less than one dollar, nor more than four dollars.

Recovery and Enforcement of Penalties.—23. Every fine and penalty under this act may be enforced with costs, by summary conviction, before any Justice of the Peace having jurisdiction where the offence was committed; or in default of payment, defender may be committed to the common gaol or lock-up house of such municipality for any time, on the discretion of the committing and convicting Justice, not exceeding fourteen days, unless the fine and penalty and all costs of committal are sooner paid.

Who may be a Witness. — 24. Upon the hearing of any information under this act, any person, including the person giving or making the complaint, shall be a competent witness, notwithstanding such witness may be entitled to any part of the pecuniary penalty under such conviction.

Application of Penalties.—25. When not otherwise provided, every penalty recovered before any Justice of the Peace under this act shall be paid and distributed as follows:—one moiety to the city, town, village or township in which the offence was committed; the other moiety, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice may seem proper. (Con. Stat. U. C. c. 54, s. 360.)

POLICE VILLAGES—OFFENCES IN.

TRUSTEES TO SUE FOR PENALTIES.—"The inspecting trustee or, in his absence, or when he is the party complained of, one of the other trustees, shall sue for all penalties incurred under the regulations of police herein established, before a Justice of the Peace having jurisdiction in the village and residing therein, or within five miles thereof; or if there be none such, then before any Justice of the Peace having jurisdiction in the village; and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender upon the oath or affirmation of a credible witness, and shall cause the penalty to be levied by distress and sale of the goods of the offender, and to be paid over to the path-master or path-masters of the division or divisions to which the village belongs, or to such of the said path-masters as the trustees may direct; and such path-master or path-masters shall apply the penalty to the repair and improvement of the streets and lanes of the village, under the direction of the trustees." (Con. Stat. U. C. c. 54, s. 310.)

POISON AND OTHER NOXIOUS THINGS.

RESTRICTION OF SALE.—"No apothecary, chemist, druggist, vendor of medicines or other person in this province, shall sell or deliver any arsenic, corrosive sublimate, strychnine, or other poison, mineral or vegetable, simple or composite, commonly known as deadly poison, (or which being incautiously or secretly administered may cause immediate death), to any person who does not then produce and deliver a certificate or note from some person duly licensed or legally authorized to practice as a physician or surgeon, or some priest or minister of religion resident in the locality, addressed to such apothecary, chemist, druggist, vendor of medicines or other person, and mentioning the name, residence, calling or profession of the person requiring such arsenic, corrosive sublimate, strychnine or other such poison as aforesaid, and stating the purpose for which it is required, and that it ought to be sold to the person requiring

the same, and such certificate or note shall be kept by the person selling or delivering such poison as his justification for so doing." (Con. Stat. C. c. 98, s. 1.)

PENALTY.—"Any apothecary, chemist, druggist, vendor of medicines, or other person who contravenes the provisions of the last section, shall for each offence incur a penalty not exceeding forty dollars, and shall, if such penalty be not forthwith paid upon conviction, be committed to gaol for a period not exceeding three months, unless the penalty and the costs of prosecution be sooner paid." (*Ib.* s. 2.)

"The penalties imposed by this act shall be recoverable, with costs, in a summary manner before any one Justice of the Peace, on the oath of one or more credible witnesses other than the prosecutor, and the prosecution may be commenced at any time within six months after the offence committed, and one moiety of the penalty shall belong to the prosecutor, and the other moiety to Her Majesty, for the public use of the province." (*Ib.* s. 3.)

FELONIOUSLY ADMINISTERING.—"Any person who unlawfully applies or administers or attempts to apply or administer to any other person, any chloroform, laudanum, or other stupifying or overpowering drug, matter or thing, with intent thereby to enable or to assist such offender or any other person to commit any felony, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two nor more than five years." (Con. Stat. C. c. 91, s. 13.)

MALICIOUSLY ADMINISTERING POISON ENDANGERING LIFE.—"Whosoever shall unlawfully and maliciously administer to, or cause to be administered to, or taken by any other person, any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby inflict upon such person any grievous or bodily harm, shall be guilty of felony, and being convicted thereof, shall be liable to be sentenced to imprisonment for any period not more than two years." (24 Vic. c. 7, s. 1.)

MALICIOUSLY ADMINISTERING WITH INTENT TO INJURE.—"Whosoever shall unlawfully and maliciously administer to, or cause

to be administered to, or taken by any other person, any poison or other noxious thing, with intent to injure, aggrieve or annoy such person, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to be sentenced to imprisonment for any period not more than two years." (*Ib.* s. 2.)

CONVICTION FOR MISDEMEANOR ON INDICTMENT FOR FELONY.—"If upon the trial of any person charged with the felony above mentioned the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of the misdemeanor above mentioned, then and in every such case the jury may acquit the accused of such felony, and find him guilty of such misdemeanor; and thereupon the delinquent shall be liable to be punished in the same manner as if convicted upon an indictment for the misdemeanor." (*Ib.* s. 3.)

POST OFFICE—OFFENCES RELATING TO.

STEALING LETTERS.—"To steal, embezzle, secrete or destroy any post-letter, shall be felony, punishable in the discretion of the court by imprisonment in the provincial penitentiary for no less than three nor more than fourteen years; unless such post-letter contains any money, chattel or valuable security, in which case the offence shall be punishable by imprisonment in the said penitentiary for life." (Con. Stat. C. c. 31, s. 55, sub. sec. 1.)

STEALING MONEY.—"To steal from or out of a post-letter any chattel, money or valuable security is felony, punishable by imprisonment in the said penitentiary for life." (*Ib.* sub. sec. 2.)

STEALING FROM BAGS.—"To steal a post-letter bag, or a post-letter from a post-letter bag, or a post-letter from any post office, or from any office of the provincial post office, or from a mail, or to stop a mail with intent to rob or search the same, shall be felony, punishable by imprisonment in the said penitentiary for life." (*Ib.* sub. sec. 3.)

OPENING LETTER-BAGS.—"To open unlawfully any post-letter bags, or unlawfully to take any letter out of such bag, shall be

felony, punishable by imprisonment in the said penitentiary for fourteen years." (*Ib.* sub. sec. 4.)

RECEIVING.—"To receive any post-letter or post-letter bag, or any chattel, money or valuable security, the stealing, taking, secreting or embezzling whereof is hereby made felony, knowing the same to have been feloniously stolen, taken, secreted or embezzled, shall be felony, punishable by imprisonment in the said penitentiary for fourteen years; and the offender may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case whether the principal felon hath or hath not been previously convicted, or is or is not amenable to justice; and however such receiver be convicted, the offence shall be punishable as aforesaid." (*Ib.* sub. sec. 5.)

FORGING.—"To forge, counterfeit or imitate any postage stamp issued or used under the authority of this act, or by or under the authority of the government or proper authority of the United Kingdom, or of any British North American province, or of any foreign country; or knowingly to use any such forged, counterfeited or imitated stamp; or to engrave, cut, sink or make any plate, die or other thing whereby to forge, counterfeit or imitate such stamp, or any part or portion thereof, except by the permission in writing of the postmaster general, or of some officer or person who, under the regulations to be made in that behalf, may lawfully grant such permission, or to have possession of any such plate, die or other thing as aforesaid without such permission as aforesaid; or to forge, counterfeit or unlawfully imitate, use or affix to or upon any letter or packet any stamp, signature, initials or other mark or sign purporting that such letter ought to pass free of postage, or at a lower rate of postage, or that the postage thereon or any part thereof hath been pre-paid, or ought to be paid by or charged to any person, department or party whomsoever, shall be felony, punishable by imprisonment in the provincial penitentiary for life; and to such felony all the provisions of the *Act respecting Forgery* shall apply as if such offence were made felony by that act, in so far as the provisions thereof are

not inconsistent with this act; and the accessories to any such offence shall be punishable accordingly." (*Ib.* sub. sec. 6.)

OPENING LETTERS.—"To open unlawfully, or wilfully to keep, secrete, delay or detain, or procure or suffer to be unlawfully opened, kept, secreted or detained, any post-letter bag, or any post-letter, whether the same came into the possession of the offender by finding or otherwise howsoever, or after payment or tender of the postage thereon (if payable to the party having possession of the same), to neglect or refuse to deliver up any post-letter to the person to whom it is addressed, or who is legally entitled to receive the same, shall be a misdemeanor." (*Ib.* sub. sec. 7.)

STEALING, &C., PRINTED MATTER.—"To steal or for any purpose to embezzle, secrete, destroy, wilfully detain or delay any printed note or proceeding, newspaper, printed paper or book sent by post, shall be a misdemeanor." (*Ib.* sub. sec. 8.)

"Wilfully and maliciously to destroy, damage, detain or delay any parcel sent by parcel post, shall be a misdemeanor." (*Ib.* sub. sec. 9.)

ENCLOSING LETTERS IN NEWSPAPERS.—"To enclose a letter or letters, or any writing intended to serve the purpose of a letter, in a parcel posted for the parcel post, shall be a misdemeanor; and to enclose a letter or any writing, or to make any written marks to serve the purpose of a letter, or enclose any other thing in a newspaper posted to pass as a newspaper at the rate of postage applicable to newspapers (except in the case of the accounts and receipts of newspaper publishers, which are permitted to pass folded in the newspapers sent by them to their subscribers), shall be a misdemeanor." (*Ib.* sub. sec. 10.)

DELAYING THE MAIL.—"To obstruct or wilfully delay the passing or progress of any mail, or of any carriage or vessel, horse, animal or carriage employed in conveying the mail on any public highway, river, canal or water communication in this province, shall be a misdemeanor." (*Ib.* sub. sec. 11.)

INJURING BAGS.—"To cut, tear, rip or wilfully damage or destroy any post-letter bag shall be a misdemanor." (*Ib.* sub. sec. 12.)

DRUNKENNESS, &c., OF MAIL CARRIER.—"It shall be a misdemeanor for any mail-carrier, or any person employed to convey any mail, post-letter bag or post-letters, to be guilty of any act of drunkenness, negligence or misconduct whereby the safety or punctual delivery of such mail, post-letter bag or post-letters might be endangered; or, contrary to this act or any regulation made under it, to collect, receive or deliver any letter or packet, or to neglect to use due care and diligence to convey any mail, post-letter bag or post letter at the rate of speed appointed therefor by the regulations then in force on the contract under which he acts." (*Ib.* sub. sec. 13.)

TOLL-GATE KEEPER DELAYING MAIL.—"It shall be a misdemeanor for any toll-gate keeper to refuse or neglect forthwith upon demand to allow any mail on any carriage, horse or animal conveying the same to pass through such toll-gate, whether on pretence of the non-payment of toll or any other, provided that nothing in this sub-section shall affect the right of any officer or person travelling with any mail to pass toll-free through any toll-gate; and in any case where such officer or person would have passed toll-free before the tenth day of August, 1850, an officer or person travelling with the mail shall in like manner pass toll-free, but not otherwise or elsewhere, unless it be otherwise provided by competent authority; and in any such case he shall not be detained on pretence of demanding such toll, but the same, if due and not paid, shall be recoverable in the usual course of law from the party liable." (*Ib.* sub. sec. 14.)

CONTRAVENTION OF REGULATIONS.—"Any wilful contravention of any regulation lawfully made under this act shall be a misdemeanor, if declared to be so by such regulation." (*Ib.* sub. sec. 15.)

SOLICITING TO COMMIT OFFENCES AGAINST THIS ACT.—"To solicit or endeavor to procure any person to commit any act

hereby made or declared hereby to be a felony or misdemeanor, shall be a misdemeanor." (*Ib.* sub. sec. 16.)

MISDEMEANOR, HOW PUNISHABLE.—"And every such misdemeanor as aforesaid shall be punishable by fine or imprisonment, or both, in the discretion of the court before whom the offender is convicted." (*Ib.* sub. sec. 17.)

ACCESSORIES.—"Every principal in the second degree, and every accessory before or after the fact to any such felony as aforesaid, shall be guilty of felony, and punishable as the principal in the first degree; and every person who aids, abets, counsels or procures the commission of any such misdemeanor as aforesaid shall be guilty of a misdemeanor and punishable as a principal offender." (*Ib.* sub. sec. 18.)

EMBEZZLEMENT.—"If any officer of, or connected with the provincial post office department, converts to his own use in any way whatever, or uses by way of investment in any kind of property or merchandize, or loans with or without interest, any portion of the public moneys entrusted to him for safe keeping, transfer, disbursement, or for any other purpose,—every such act shall be deemed and adjudged to be an embezzlement of so much of the said moneys as are thus taken, converted, invested, used or loaned, which is hereby declared to be a felony; and the neglect or refusal to pay over any public moneys in his hands, or transfer or disburse any such public moneys promptly, on the requirement of the postmaster general, shall be *prima facie* evidence of such conversion to his own use of so much of the public moneys as are in the hands of such officer. And all persons advising or knowingly and willingly participating in such embezzlement, upon being convicted thereof before any court of competent jurisdiction, shall for every such offence forfeit and pay to her Majesty, her heirs or successors, a fine equal to the amount of the money embezzled, and shall suffer imprisonment for a term not less than three months and not more than seven years." (*Ib.* s. 56.)

STEALING, &c., KEYS OR LOCKS USED FOR MAILS.—If any person steals, purloins, &c., or unlawfully makes, forges, &c., or knowingly aids, &c., in counterfeiting any key suited to any

lock adapted to the use of the post office department, and in use in any of the mail bags, such person, on conviction, shall be deemed guilty of felony, and shall be punished by imprisonment for any term not exceeding seven years. (See *ib.* s. 57.)

CRIMINAL PROCEDURE.—"And any indictable offence against this act may be dealt with, indicted and tried and punished, and laid and charged to have been committed either in the district, county or place where the offence is committed, or in that in which the offender is apprehended or is in custody, as if actually committed therein." (*Ib.* s. 58, sub. sec. 1.)

OFFENCES COMMITTED DURING TRANSIT OF MAIL. — "And where the offence is committed in or upon, or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter bag, or post letter, or chattel or money or valuable security sent by post, such offence may be dealt with and enquired of, tried and punished, and charged to have been committed as well within the district, county or place in which the offender is apprehended or is in custody, as in any district, county or place through any part whereof such mail, person, post letter bag, post letter, chattel, money, or valuable security, passed in the course of conveyance and delivery by the post, in the same manner as if it had been actually committed in such district, county or place." (*Ib.* sub. sec. 2.)

ON ROADS, &c., FORMING BOUNDARIES.—"And in all cases where the side or centre or other part of a river or canal, or navigable water, constitutes the boundary between two districts, counties or places, then to pass along the same shall be held to be passing through both." (*Ib.* sub. sec. 3.)

AIDERS AND ABETTORS. —"And every accessory before or after the fact, if the offence be felony, and every person aiding or abetting or counselling or procuring the commission of any offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished, as if he were a principal, and his offence may be laid and charged to have been committed in any district, county or place, where the principal offence might be tried." (*Ib.* sub. sec. 4.)

PROPERTY, HOW LAID IN INDICTMENT.—In all indictments preferred against persons for offences under this act, the property may be laid in the postmaster general; not necessary to allege in the indictment or at the trial that the letter, packet, chattel, &c., was of any value. By sub-section 2 anything used in the service of the post office, or moneys arising from postage, shall be laid in her Majesty. (See *ib.* s. 59.)

PENALTIES, HOW RECOVERABLE.—"In all mere pecuniary penalties imposed by this act, or by any regulation of the governor in council to be made under it, shall be recoverable with costs by the postmaster general, by civil action in any court having jurisdiction to the amount, and shall belong to the Crown, saving always the power of the Governor in Council to allow any part or the whole of such penalty to the officer or party by whose information or intervention the same has been recovered, as in the case of penalties recovered under other laws relating to the collection of the revenue; but all such penalties shall be sued for within one year after they are incurred, and not afterwards;

PROVISO.—"Provided that if the penalty do not exceed forty dollars, it may be recovered before any one Justice of the Peace in a summary manner, and if not paid, may be levied by distress under warrant of such Justice; and if the penalty exceeds forty dollars, the offender may be indicted for a misdemeanor, in contravening the provisions of this act, or of the regulations made under it, (instead of being sued for such penalty), and if convicted, shall be punishable by fine or imprisonment, or both, in the discretion of the court." (*Ib.* s. 61.)

WHO MAY BE A WITNESS.—"In any action or proceeding for the recovery of postage, or of any penalty under this act, the same may be recovered on the evidence of any one credible witness, and any postmaster or other officer or servant of the provincial post office shall be a competent witness, although he is entitled to, or entertains reasonable expectation of, receiving some portion or the whole of the sum to be recovered; and the *onus* of shewing that anything proved to have been done by the defendant was done in conformity to, or without contravention of this act, shall lie upon the defendant." (*Ib.* s. 62.)

PRISONER.

RESCUE OF A PRISONER is the forcibly and knowingly freeing another from an arrest or imprisonment, and generally renders the rescuer an accomplice of the crime. Thus a rescue in treason is treason, in felony is felony, and in misdemeanor a misdemeanor.

ESCAPE OF A PRISONER is, where a person arrested upon criminal process eludes the vigilance of his keeper before actual imprisonment, and is punishable by fine or imprisonment. Officers also, who after an arrest *negligently* permit a felon to escape, are punishable by fine; but *voluntarily* suffering an escape renders them participators in the crime for which the felon was in custody—whether treason, felony or trespass.

Private individuals who have persons lawfully in their custody are guilty of an escape, if they suffer them illegally to depart; but they may protect themselves from liability by delivering over their prisoners to some legal and proper officer. A private person thus guilty of an escape incurs the punishment of fine or imprisonment, or both.

PRISONER ENTITLED TO COPY OF INDICTMENT.—"Any person indicted in any of Her Majesty's courts in Upper Canada for any felony or misdemeanor, may apply to such court for a copy of the indictment, and the same shall with all convenient expedition be made out and delivered to such person, upon payment to the clerk or officer at the rate of fifteen cents for every one hundred words contained in such indictment; but such copy shall not be received in evidence upon any trial for a malicious prosecution." (Con. Stat. U. C. c. 110, s. 1.)

PRISONERS ENTITLED TO COPIES OF DEPOSITIONS.—"The person who has the lawful custody of the examinations of the witnesses upon whose depositions any person has been held to bail or committed to prison for any offence, shall, on demand, and on payment of a reasonable sum for the same, not exceeding five cents for each folio of one hundred words, deliver to such person copies of such examinations and depositions." (Con. Stat. C. c. 99, s. 7.)

WHEN A DEMAND OR SPECIAL ORDER FOR SUCH IS NECESSARY. —"If no such demand be made before the day appointed for the commencement of the assizes or sessions at which the trial of such person is to take place, he shall not be entitled to have copies of such examinations or depositions unless the judge or other person to preside at such trial is of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but such judge or other person so to preside may, if he thinks fit, postpone the trial on account of such copies not having been previously received by the party charged." (*Ib.* s. 8.)

ESCAPE BY PARTY HIMSELF.—As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice before such time as he is to be delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment.

ESCAPE SUFFERED BY AN OFFICER. — Whenever an officer having a party lawfully in his custody, on a charge of felony, *voluntarily* permits him to escape, the officer is involved in the legal guilt of the crime charged on his prisoner.

Where he negligently permits a prisoner to escape, he is guilty of a misdemeanor; and he is guilty in this degree if a prisoner in his charge commits suicide.

LET GO VOLUNTARILY, CANNOT BE RE-TAKEN.—If an officer hath arrested a man by virtue of a warrant, and then taketh his promise that he will come again, and so letteth him go, the officer cannot, after arrest, take him again by force of his former warrant, for that this was by the consent of the officer. But if he return and put himself again under the custody of the officer, it seems that it may be properly argued that the officer may lawfully detain him, and bring him before the Justice, in pursuance of the warrant.

And it is said generally in some books that an officer who hath negligently suffered a prisoner to escape may re-take him wherever he finds him, without mentioning any fresh pursuit;

and indeed, since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it.

BREAKING OPEN DOORS TO RE-TAKE.—And wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house, the doors may be broken open to take him, on a refusal of admittance.

RESCUING PERSONS CONVICTED OF MURDER, OR COMMITTED FOR MURDER.—"If any person by force sets at liberty, or rescues, or attempts to rescue or set at liberty, any person out of prison who has been committed for or found guilty of murder, or rescues, or attempts to rescue, any person convicted of murder going to execution, or during execution, such offender is guilty of felony, and shall suffer death, and any accessory before the fact to any such offence is guilty of felony, and shall suffer death." (Con. Stat. U. C. c. 97, s. 4.)

PRIZE FIGHT.

OFFENCE.—All persons present at a prize fight, and who have gone there for the purpose of seeing it, are principals in the breach of the peace, and indictable for a misdemeanor. If death ensue, not only the seconds but all who are present looking on, are guilty of manslaughter. It is the duty of Justices to cause the intended combatants to be brought before them, and to bind them over to keep the peace till the next assizes or sessions.

PROFANATION OF THE LORD'S DAY.

TRADE.—"It is not lawful for any merchant, tradesman, artificer, mechanic, workman, labourer, or other person whatever, on the Lord's day to sell or publicly shew forth, or expose or offer for sale, or to purchase any goods, chattels, or other personal property, or any real estate whatever, or to do or exercise any worldly labour, business, or work of his ordinary calling; conveying travellers or Her Majesty's mail

by land or by water, selling drugs and medicines, and other works of necessity, and works of charity, only excepted." (Con. Stat. U. C. c. 104, s. 1.)

Political Meetings, Tippling, &c.—"It is not lawful for any person on that day to hold, convene, or to attend any public political meeting, or to tipple, or allow or permit tippling in any inn, tavern, grocery, or house of public entertainment, or to revel, or publicly exhibit himself in a state of intoxication, or to brawl or use profane language in the public streets or open air, so as to create any riot or disturbance, or annoyance to her Majesty's peaceable subjects." (*Ib.* s. 2.)

Games and Amusements.—"It is not lawful for any person on that day to play at skittles, ball, foot ball, racket, or any other noisy game, or to gamble with dice or otherwise, or to run races on foot, or on horseback, or in carriages, or in vehicles of any sort." (*Ib.* s. 3.)

Hunting, &c.—"Except in defence of his property, from any wolf or other ravenous beast or bird of prey, it is not lawful for any person on that day to go out hunting or shooting, or in quest of, or to take, kill or destroy, any deer or other game, or any wild animal, or any wild fowl or bird, or to use any dog, gun, rifle or other engine, net or trap, for the above mentioned purpose." (*Ib.* s. 4.)

Fishing.—"It is not lawful for any person on that day to go out fishing, or to take, kill or destroy any fish, or to use any gun, fishing rod, net or other engine for that purpose." (*Ib.* s. 5.)

Bathing.—"It is not lawful for any person on that day to bathe in any exposed situation in any water within the limits of any incorporated city or town, or within view of any place of public worship, or private residence." (*Ib.* s. 6.)

Penalties.—"Any person convicted before a Justice of the Peace of any act hereinbefore declared not to be lawful, upon the oath or affirmation of one or more than one credible witness, or upon view had of the offence by the Justice himself, shall for every such offence be fined in a sum not exceeding forty dollars, nor less than one dollar, together with the costs and charges attending the proceedings and conviction." (*Ib.* s. 7.)

SALES AND AGREEMENTS.—"All sales and purchases, and all contracts and agreements for sale or purchase, of any real or personal property whatsoever, made by any person or persons on the Lord's day, shall be utterly null and void." (*Ib.* s. 8.)

PROCEDURE.—"When any person has been charged upon oath or otherwise, in writing, before any Justice of the Peace, with any offence against this act, the said Justice shall summon the person so charged to appear before him, at a time and place to be named in such summons; and if such person fails or neglects to appear accordingly, then (upon proof of due service of the summons upon such person, by delivering or leaving a copy thereof at his house, or usual or last place of abode, or by reading the same over to him personally), the said Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself, or some other Justice of the Peace having jurisdiction within the same county or municipality; and the Justice before whom the person charged appears or is brought shall proceed to hear and determine the case, or the said Justice, on view of the offence, may verbally order, or if on the complaint of a third party, then may, in writing, order the offender to be at once committed (although it be on the Lord's day) to the common gaol of the place, or in other safe custody, there to remain until the morrow, or some other day, according to circumstances, until the case be heard and disposed of." (*Ib.* s. 9.)

FORM OF CONVICTION.

Be it remembered, that on the —— day of —— in the year of our Lord eighteen —— in the county of —— (or at the city of —— *as the case may be*) A. B. of —— is convicted before me C. D., one of Her Majesty's Justices of the Peace for the said county, (*or* city, *as the case may be*,) for that he the said A. B. did (*here specify the offence, and the time and place when and where the same was committed, as the case may be*) and I, the said C. D., adjudge the said A. B., for his offence to pay immediately, (*or* on or before the —— day of ——) the sum of —— and also the sum of —— for costs; and in default of payment of the said sums respectively, to be imprisoned in the common gaol of the said county (*or* city, *as the case may be*) for the space of —— months, unless the said sums be sooner paid; and I direct that the said sum of —— (*the penalty*) shall be paid as follows, that is to say, one moiety thereof to the party charging the offence, and the other moiety to the treasurer of the county (naming the one in which the

offence was committed, or chamberlain of the said city, *as the case may be*) to be by him applied according to the provisions of the act. (*Insert the title of this act.*)

Given under my hand and seal, the day and year first mentioned.

C. D., J. P. [L.S.]

CONVICTION NOT VOID FOR WANT OF FORM.—"A conviction under this act shall not be quashed for want of form, nor shall any warrant of commitment be held void by reason of any defect therein, if it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the commitment." (*Ib.* s. 11.)

DEFAULT—TIME—COMMITMENT.—"In default of payment of any fine imposed under this act, together with the costs attending the same, within the period by the Justice of the Peace before whom such conviction takes place specified for the payment thereof at the time of conviction, such Justice of the Peace (if he deems it expedient so to do) may issue his warrant directed to any constable to levy the amount of such fine and costs within a certain time, to be in the said warrant expressed; and in case no distress sufficient to satisfy the amount be found, he may commit the offender to the common gaol of the county wherein the offence was committed for any term not exceeding three months, unless the fine and costs be sooner paid." (*Ib.* s. 12.)

LIMITATION—EVIDENCE.—"The prosecution for any offence punishable under this act must be commenced within one month after the commission of the offence, and not afterwards; and the evidence of any inhabitant of the county or municipality in which the offence has been committed shall be admitted and receivable, notwithstanding the fine incurred by the offence may be payable for the benefit of such municipality; but the party who makes the charge in writing before the Justice shall not be admitted as a witness in the case." (*Ib.* s. 13.)

APPEALS.—"In case a person thinks himself aggrieved by any conviction or decision under this act, then, in case such person, within six days after such conviction or decision, and ten days at least before the court of general Quarter Sessions of the Peace, or in cities before the first recorder's court (if

there be a recorder's court) to be held not sooner than twelve days next after such conviction or decision, may appeal in the manner provided in and subject to the provisions of the act respecting appeals in cases of summary conviction." (*Ib.* s. 14.)

RETURN OF CONVICTIONS.—"Every Justice of the Peace before whom any person is convicted of any offence against this act shall transmit the conviction to the next court of general Quarter Sessions, or recorder's court (as the case may be) to be holden for the county or city wherein the offence was committed, there to be kept by the proper officer among the records of the court." (*Ib.* s. 15.)

VENUE—PLEADING.—"All actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and must be commenced within six months after the fact committed, and not afterwards; and notice in writing of such action, and of the cause thereof, must be given to the defendant one month at least before the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon." (*Ib.* s. 16.)

TENDER OF AMENDS, &C.—"No plaintiff shall recover in such action, if tender or sufficient amends be made before such action brought, or if a sufficient sum of money be paid into court after such action brought, by or on behalf of the defendant; and if a verdict passes for the defendant, or the plaintiff becomes non-suit, or discontinues any such action after issue joined, or if upon a demurrer or otherwise judgment be given against the plaintiff, the defendant may recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases." (*Ib.* s. 17.)

DISTRIBUTION OF PENALTIES.—"All sums of money awarded or imposed as fines or penalties by virtue of this act shall be paid as follows, that is to say: one moiety thereof shall be paid to the party charging the offence in writing before the Justice,

and the other moiety to the treasurer of the county or city wherein the offence was committed, to be by him accounted for in the same manner as for other moneys deposited with or paid over to him." (*Ib.* s. 18.)

INDIANS EXCEPTED.—"This act is not to extend to the people called Indians." (*Ib.* s. 19.)

PAWNBROKERS.

PAWNBROKER DEFINED.—"Every person who receives or takes, by way of pawn, pledge or exchange, any goods for the repayment of money lent thereon, shall be deemed a pawnbroker within the meaning of this act."* (Con. Stat. C. c. 61, s. 6.)

TO BE LICENSED.—"Every person exercising the trade of a pawnbroker in this province shall take out a license, under the hand of the governor, to be issued by the revenue inspectors, and shall renew the same annually." (*Ib.* s. 1.)

PENALTY.—A pawnbroker who neglects to take out or renew such license is liable to a penalty of two hundred dollars for every pledge he takes without such license, to be recovered in any of Her Majesty's courts."† (*Ib.* s. 2.)

ONLY ONE SHOP ALLOWED.—No person shall by virtue of one license keep more than one place for taking in goods to pawn. (*Ib.* s. 4.)

TO EXHIBIT A SIGN.—"Every pawnbroker shall have a sign, with his name and the word "Pawnbroker" in large legible characters thereon, placed over the door outside the shop or other place used by him for carrying on such business." (*Ib.* s. 7.)

* The Justices should observe that some sections of this act can only be enforced by two or more Justices.

† It is generally the case that the party who acts without a license as a pawnbroker is a receiver of stolen goods, and therefore should receive the attention of the police.

PENALTY FOR NEGLECT.—"In case any pawnbroker neglects to have such sign so placed, he shall forfeit forty dollars for every shop or place made use of for one week without having the same so put up, to be recovered with costs, on the oath of one witness, before any two Justices of the Peace; and if not forthwith paid upon conviction, the same may be levied by distress and sale of the offender's goods, and one-half of the penalty shall be paid to the informer and the other half to the Queen."* (*Ib.* s. 8.)

MAY BE COMMITTED.—If there be no sufficient distress, and payment be not *forthwith* made, the offender shall be committed to gaol for a term not exceeding three months nor less than fourteen days, unless the penalty and reasonable charges be sooner paid.† (See *ib.* s. 9.)

RATES TO BE EXHIBITED.—"Every pawnbroker shall cause to be painted or printed in legible characters the rate of profit, &c., by this act allowed to be taken, and shall place the same in a conspicuous part of the shop." (*Ib.* s. 15.)

NOTE TO BE GIVEN TO THE PAWNERS.—At the time of taking any pawn a printed or written note or memorandum is to be given to the party pawning, which note shall contain a description of the goods so pawned and of the money advanced thereon, with the date and place of abode of the pawner; and upon such note or the back thereof the name and place of abode of the pawnbroker shall be written or printed; which note the party pawning is required to take, and unless he takes the same the pawnbroker shall not receive the pledge. (See *ib.* s. 18.)

Section 20 declares that said note must be produced to the pawnbroker before he is obliged to re-deliver the goods except as in this act is hereafter provided.

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* The *unlicensed* as well as the licensed pawnbroker is liable to be fined under this section.

† It is evident from the perusal of the above section that the intention of the legislature is, that parties liable under this and previous section should be severely punished, and therefore care should be taken in drawing the conviction and commitment, and then signed by at least two Justices.

PAWNBROKER'S FEES. — When the sum lent is under one dollar the note shall be given gratis; if one dollar and less than two dollars, pawnbroker may take one half-penny; if two dollars and under four dollars, one penny; if four dollars and under twenty dollars, two pence; and if twenty dollars and upwards, four pence. (See *ib.* s. 19.)

PENALTY.—"If any person knowingly and designedly pawns, pledges or exchanges, or unlawfully disposes of the goods of any other person, not being employed or authorized by the owner so to do, any Justice of the Peace resident nearest to the place where the offence has been committed may grant his warrant to apprehend the offender; and if he is thereof convicted by the oath of one witness, or by confession, before a Justice of the Peace, he shall forfeit not more than twenty dollars nor less than four dollars and also the value of the goods pawned; and if not forthwith paid, the convicting Justice shall commit him to the common gaol of the district or county where the offence was committed, there to remain and be kept to hard labour for not more than three months, unless the forfeiture be sooner paid." (*Ib.* s. 22.)

FORFEITURE, HOW APPLIED.—"The said forfeiture when recovered shall be applied towards making satisfaction thereout to the party injured, and defraying the costs of the prosecution, as may be adjudged reasonable by the convicting Justice." (*Ib.* s. 23.)

FORGING PAWNBROKER'S NOTES, &C.—"If any person counterfeits, forges or alters any note or memorandum given by a pawnbroker for goods pledged, or causes or procures the same to be done, or alters, vends or sells such note or memorandum, knowing the same to be counterfeited, forged or altered, with intent to defraud any person, such offender shall be punished as hereafter mentioned." (*Ib.* s. 24.)

SUSPECTED FORGERS, HOW DEALT WITH.—"In case any note or memorandum aforesaid is uttered, shown, or offered to any person, and such person has reason to suspect that the same has been forged, he may seize the person offering the same and

deliver him to a bailiff or constable, who shall convey him before some Justice of the place where the offence has been committed, or nearest thereto; and, if upon examination it appears to the satisfaction of such Justice that such person is guilty, he shall commit him to the common gaol of the district or county for any time not exceeding three months." (*Ib.* s. 25.)

Refusing account of Goods.—A person refusing to give a satisfactory account of himself or the means whereby he became possessed of the goods, or gives any false information to the pawnbroker or his servant as to whether such goods are his own property or not, or if there be reason to suspect that such goods have been stolen or otherwise illegally or clandestinely obtained, or if any person not entitled nor having any color of title by law to redeem the goods shall attempt to redeem, the person to whom the goods are offered to be pawned or to whom the offer to redeem is made may seize and detain the person offering to pawn or redeem, and shall convey the person offering to pawn or redeemin to the custody of a peace officer, who shall convey the same before a Justice of the district. (See *ib.* s. 26.)

If Justice suspects.—If Justice, upon examination and enquiry, suspects that the goods have been stolen, or illegally or clandestinely obtained, or that the person offering such hath no right to do so, he shall commit the person into custody, until further information and examination is obtained, and if afterwards it appears to the Justice that such goods were improperly and illegally obtained, he may commit the offender to prison for a term not exceeding three months. (See *ib.* s. 27.)

Taking Goods from Journeymen.—If any person knowingly buys or takes in pawn from any journeyman mechanic any goods of any manufacture, or any materials plainly intended for manufacturing, and before such goods or materials have been finished, or any goods, material, linen or apparel which have been entrusted to any person to wash or scour, &c., and is convicted upon confession, or on the oath of one witness

before a Justice, he shall forfeit the sum lent thereon, and forthwith restore the said goods and chattels to the lawful owner. (See *ib.* s. 28.)

PROCEEDINGS BY OWNERS OF GOODS ILLEGALLY PAWNED.—If any description of goods entrusted to others in the course of manufacture be illegally pawned or exchanged, and it be proven on the oath or affirmation of a credible witness before a Justice that there is just cause to believe or suspect that such have been so pawned without the owner's knowledge, such Justice may issue a search warrant to search the pawnbroker's premises; and if he refuse to allow such search, a peace officer may break open the premises, within business hours, and search for the goods, avoiding any wilful damage. (See *ib.* s. 29.)

GOODS FOUND CONCEALED.—If after such refusal, and upon forced search, the goods so pawned or exchanged are found, and the property of the owner made out to the satisfaction of the Justice by the oath of a credible witness, or the confession of the person charged, the Justice shall cause the goods to be forthwith restored to the owner; and the occupier shall be fined not less than eight dollars nor more than twenty dollars, to be recovered as other fines. (See *ib.* s. 30.)

REFUSAL TO RESTORE.—In case within one year after any goods have been pawned, the pawner or other person on his behalf tenders to the person who lent the money the note required to be given by this act, and also the principal money lent and the profits according to the rates of the act, and the person who took the goods in pawn, or any person on his behalf, refuses to deliver back the goods so pawned, the pawner may make oath thereof before a Justice, who shall cause the person so refusing to be brought before him, and shall examine on oath the parties themselves and other credible witnesses, and if tender of the note and the principal money and profits thereon due to the lender is again made, and in case the lender again refuse to accept or make such satisfaction as such Justice orders, he shall then, by the Justice, be committed to prison until he delivers up the goods, or

makes satisfaction thereof for the value to the party entitled to the same. (See *ib.* s. 31.)

HOLDER OF NOTE OWNER OF GOODS.—The pawnbroker shall consider party producing the note mentioned in sec. 18 as the owner of the goods, and shall deliver them to him on payment of the principal and profits, unless notified in writing by real owner not to deliver them to the party producing the note. (See *ib.* s. 32.)

LOSS OF NOTE.—The holder of the note has the right to redeem goods unless notice given in writing of loss of note, and in case of loss, the owner of goods has the right to receive from the pawnbroker the form of an affidavit of the particular circumstances of the case; and upon proving to the satisfaction of a Justice his right to the goods, can obtain the goods, upon leaving with the pawnbroker the copy of note and the affidavit. (See *ib.* s. 33.)

WHEN GOODS MAY BE SOLD.—"All pawned goods shall be deemed forfeited, and may be sold, at the expiration of one year from the time of pawning the same, exclusive of the day on which they were so pawned." (*Ib.* s. 34.)

GOODS TO BE EXPOSED BEFORE SALE.—Before such sale the goods shall be exposed to view, a catalogue thereof published, and an advertisement giving notice of the sale shall be published in some public newspaper, on two several days, two days at least before the sale. (See *ib.* s. 36.)

PENALTY FOR NOT DESCRIBING.—"In case the goods be not described separately in the catalogue, the pawnbroker shall forfeit to the owner of the pledge not less than eight dollars, nor more than forty dollars, to be recovered as other fines under this act."* (*Ib.* s. 37.)

DISPOSAL OF SURPLUS.—In case such goods have been sold for more than was due thereon, and demand be made within three years after such sale, the overplus shall be paid to the person on whose account the goods were pawned. (See *ib.* s. 39.)

* It is not stated whether or not one Justice can act under this section, and therefore it will be more prudent for two to act.

ACCOUNT OF SALES TO BE KEPT — PAWNER MAY INSPECT.— The pawnbroker shall keep a full account of the goods sold by auction, giving date when pledged, name of pawner, the day when, and the amount for which each pledge was sold, and the name and abode of the auctioneer, (see *ib.* s. 38.); which account the pawner shall be permitted to inspect on payment of five cents. (See *ib.* s. 40.)

REFUSAL OF INSPECTION. — In case the pawnbroker refuse inspection of the entry (of his sales) to the person who pawned the goods, or to his executors, administrators or asignee, or in case the goods were sold for more than the sum entered in such book, or in case he made no entry, or did not *bona fide* sell the goods according to this act, or refuses to pay the overplus on demand, he shall forfeit forty dollars, and treble the sum the goods were originally pawned for, to the person whom, or on whose account they were pawned,—to be recovered as other fines, and if not forthwith paid, to be levied by distress by warrant of the convicting Justice. (See *ib.* s. 41.)

RESTRICTIONS UPON PAWNBROKERS.—No pawnbroker shall purchase, receive, or take any goods in pledge from any person who appears to be under the age of fifteen, or to be intoxicated; nor shall he purchase or take in pawn, pledge or exchange the note aforesaid of any other pawnbroker; nor employ any one under sixteen years of age to take any pledge, nor receive any goods by way of pawn, pledge or exchange on any fast or thanksgiving day appointed by authority, or on Sunday, nor on any other day before eight o'clock in the morning, nor after eight in the evening, except on Saturday evenings and the evenings preceding Good Friday and Christmas day, at which times he may keep his place of business open until ten in the evening. (See *ib.* s. 43.)

IF GOODS LOST OR DAMAGED. — "In case it appears or is proved on oath before any Justice of the Peace that the goods pawned were sold before the time limited, or have been embezzled or lost, or have become of less value than when pawned, through the neglect or wilful misbehaviour of the pawnbroker

or his servants, the Justice shall award a reasonable satisfaction to the owner in respect of such damages." (*Ib.* s. 44.)

BOUND TO PRODUCE BOOKS.—When the Justice thinks the production of any book, memorandum or voucher, or other paper necessary, which is or ought to be in the possession of the pawnbroker, he shall summon him to attend with such paper, and he is bound to produce it in the state it was when the pawn was received; if he neglects, refuses or fails to shew good cause to the satisfaction of the Justice why he refuses, he shall forfeit not less than twenty nor more than forty dollars, to be levied and recovered as hereinbefore. (See *ib.* s. 47.)

LIMITATION OF PROSECUTIONS.—"No pawnbroker shall be liable to any prosecution before a Justice under this act, unless information be given within twelve months next after the offence was committed." (*Ib.* s. 48.)

NO FEE ON SUMMONS.—No fee shall be taken for any summons or warrant granted by any Justice under this act, so far as the same relates to goods pawned, pledged or taken in exchange. (*Ib.* s. 51.)

APPEAL TO SESSIONS.—In case any person convicted of an offence punishable by this act thinks himself aggrieved by the judgment of the Justices before whom he has been convicted, he may appeal to the next General Quarter Sessions of the Peace. (See *ib.* s. 52.)

STAY OF EXECUTION.—In case of an appeal, execution to be suspended, upon the person convicted entering into a recognizance *at the time of the conviction*, with two sureties in double the sum he has been adjudged to pay, to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the court, and to pay such costs as may be awarded at the sessions. (See *ib.* s. 53.)

PUBLIC HEALTH—OFFENCES AGAINST.

HEALTH OFFICERS MAY ENTER AND EXAMINE PREMISES.—"The health officers of any municipality or police village in Upper Canada, or any two of them, may, in the day-time, as

often as they think necessary, enter into and upon any premises in the place for which they hold office, and examine such premises." (Con. Stat. U. C. c. 59, s. 1.)

IF FOUND UNCLEAN, MAY ORDER PROPRIETOR TO CLEANSE.—"If upon such examination they find that the premises are in a filthy or unclean state, or that any matter or thing is thereon which in their opinion may endanger the public health, they, or any two of them, may order the proprietor or occupant of the premises to cleanse the same and to remove what is so found thereon." (*Ib.* s. 2.)

NEGLECT OR REFUSAL.—"Such health officers, in case the proprietor or occupier of the premises neglects or refuses to obey their directions, may call to their assistance all constables and any other persons they think fit, and may enter on the premises and cleanse the same, and remove therefrom and destroy what in their opinion it is necessary to remove or destroy for the preservation of the public health." (*Ib.* s. 3.)

PENALTY.—"If any person wilfully disobeys or resists any lawful order of the health officers, or of any two of them, or wilfully violates any regulation made and declared by the Governor in council under this act, or wilfully resists or obstructs the health officers in the execution of their duties, such person, on conviction before two or more of Her Majesty's Justices of the Peace for the locality where the offender resides, or where the offence has been committed, shall pay a fine of not less than four dollars nor more than eighty dollars; which fine shall be paid to Her Majesty's Receiver General for the public uses of the province." (*Ib.* s. 5.)

IN CASE OF MALIGNANT DISEASES IN CROWDED AND UNHEALTHY PLACES.—"Whenever a disease of a malignant and fatal character is discovered to exist in any dwelling-house, or out-house temporarily occupied as a dwelling, in any city, town or village in Upper Canada, or within a mile thereof, and which house is situated in an unhealthy or crowded part of the city, town, or village, or adjoining county, or is in a filthy and neglected state, or is inhabited by too many persons, the board of health

of the city, town or village, or a majority of the members thereof, may, in the exercise of a sound discretion, and at the expense of the board, compel the inhabitants of such dwelling house or out-house to remove therefrom, and may place them in sheds or tents, or other good shelter, in some more salubrious situation, until measures can be taken under the direction and at the expense of the board for the immediate cleansing, ventilation, purification and disinfection, of such dwelling house or out-house." (*Ib.* s. 6.)

PUBLIC HEALTH.

MEMBERS OF MUNICIPAL COUNCILS TO BE HEALTH OFFICERS.—"The members of every township, city, town and incorporated village council, shall be health officers within their respective municipalities, under the Consolidated Statute for Upper Canada respecting *the public health*, and under any act passed after this act takes effect for the like purpose; but any such council may by by-law delegate the powers of its members as such health officers to a committee of their own number, or to such persons, either including or not including one or more of themselves, as the council thinks best." (Con. Stat. U. C. c. 54, s. 245.)

CITIES, &c.—"The council of every city, town, and incorporated village, are authorised to pass by-laws for providing for the health of the municipality and against the spreading of contagious or infectious diseases." (*Ib.* s. 294, sub. sec. 28.)

POLICE VILLAGES.—"The trustees of every police village shall be health officers within the police village, under the Consolidated Statute of Upper Canada respecting the public health, and under any other act that may be passed for the like purpose." (*Ib.* s. 311.)

PUBLIC MORALS—OFFENCES AGAINST.

The council of every county, city and town, may pass by-laws:

1. "For enforcing the due observance of the sabbath according to law;

2. "For preventing the sale or gift of intoxicating drink to a child, apprentice or servant, without the consent of a parent, master or legal protector;

3. "For preventing the posting of indecent placards, writings or pictures, or the writing of indecent words, or the making of indecent pictures or drawings, on walls or fences in streets or public places;

4. "For preventing vice, drunkenness, profane swearing, obscene, blasphemous or grossly insulting language, and other immorality and indecency in streets, highways or other public places;

5. "For suppressing tippling-houses and houses of ill-fame;

6. "For preventing or regulating horse-racing;

7. "For preventing or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys and other places of amusement;

8. "For suppressing gambling-houses, and for seizing and destroying faro-banks, rouge-et-noir, roulette-tables and other devices for gambling found therein;

9. "For restraining or punishing vagrants, mendicants, and persons found drunk and disorderly in any street, highway or public place;

10. "For preventing indecent public exposure of the person, and other indecent exhibitions;

11. "For preventing or regulating the bathing or washing the person in any public water near a public highway."* (Con. Stat. U. C. c. 54, s. 282.)

PROFANE SWEARING.—Profanely cursing and swearing is punishable by 19 George II. c. 21, before a Justice of the Peace within eight days of the offence; if a day labourer, common soldier, sailor or seaman, by a fine of one shilling; if not paid, or security given, imprisonment for ten days. Any other person under the degree of gentleman, two shillings,—if a gentleman, five shillings, recoverable within eight days.

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* Some of the above offences are indictable as common nuisances. See article "Nuisance."

PUBLIC MEETINGS.

Con. Stat. C. c. 82, provides for the orderly holding of public meetings:

"All public meetings of the inhabitants or of any particular class of the inhabitants of any district, county, riding, city, town, township, ward, or parish in this province, which are required by law, and summoned or called in the manner hereinafter by the fourth section of this act prescribed, shall be and be deemed to be public meetings within the meaning of this act." (*Ib.* s. 1.)

MEETING CALLED BY SHERIFF, &c. — All public meetings of the inhabitants of any district, county, riding, city, town, township, ward, or parish in this province, called by the high sheriff of any such district or county, or by the mayor or other chief municipal officer of any such city or town respectively, in the manner hereinafter by the fifth section of this act prescribed, upon the requisition of any twelve or more of the freeholders, citizens, or burgesses of such district, county, riding, town, township, ward, or parish having a right to vote for members to serve in the provincial parliament; and all such meetings called by any two or more Justices of the Peace resident in any such district, &c., upon a like requisition from twelve or more freeholders shall be and be deemed public meetings within the meaning of this act. (See *ib.* s. 2.)

All public meetings declared to be public meetings within the meaning of this act by any two Justices of the Peace resident in such district, &c., in the manner hereinafter by the sixth section of this act prescribed, shall be and be deemed to be public meetings within the meaning of this act. (See *ib.* s. 3.)

TO BRING MEETING REQUIRED BY LAW WITHIN PROTECTION.— In every notice or summons for calling together any such public meeting as in the first section of this act is mentioned, there shall be contained a notice that such meeting and all persons attending the same will be within the protection of this act; and which part of such notice or summons may be in the form or to the effect following:

"And be it known, that the meeting to be held in pursuance hereof, is called in conformity with the provisions of the act respecting the calling and ordering of public meetings; and that the said meeting, and all persons attending the same, will therefore be within the protection of the said act; of all which premises all manner of persons are hereby in her Majesty's name most strictly charged and commanded, at their peril, to take especial notice, and to govern themselves accordingly." (*Ib.* s. 4.)

To bring Meeting called by Sheriff within Protection. —The notices issued by the sheriff, or two or more Justices, mayor, &c.:

1. Shall be issued at least three days previous to the day upon which such meeting is appointed to be held;

2. Shall set forth the names of the requisitionists, or a competent number of them;

3. That such meeting is called in conformity with the provisions of this act;

4. That such meeting, and all persons attending the same, will be within the protection of this act, and that all persons are required to take notice thereof, and govern themselves accordingly; and

5. The notice may be in the form given in the act, or to the like effect. (*Ib.* s. 5.)

Protection to Private Persons. — Upon information on oath before any Justice of the Peace that any public meeting of the inhabitants, not being a public meeting of the description mentioned in the first or second sections of this act, is appointed to be held at any place within the jurisdiction of such Justice, and that there is reason to believe that great numbers of persons will be present at such meeting, any two Justices, having jurisdiction where such meeting is to be held, may give notice of such meeting, and declare the same and all persons attending the same under the protection of this act. The notice may be in the form given in the act to take effect. (See *ib.* s. 6.)

Notice to be given by Sheriff. — Every sheriff, mayor, Justice of the Peace, or other person who calls any such public meeting as is mentioned in the second section of this act, shall give public notice thereof as extensively as he reasonably may,

by causing to be posted and distributed throughout the district, &c., for which the same is called, a sufficient number of printed or written copies of the notice calling the same. (*Ib.* s. 7.)

NOTICE BY JUSTICES.—The Justices who declare any public meeting about to be held to be a public meeting within the protection of this act, under the third section of this act, shall give public notice of its having been so declared, by causing to be posted and distributed throughout the district as many copies of the notice or declaration, either written or printed, as may be necessary, and as long before such meeting as the time will reasonably admit. (*Ib.* s. 8.)

SHERIFFS AND JUSTICES TO ATTEND MEETING.—Every such sheriff, mayor, Justice of the Peace or other person calling such meeting, whether one of such may or may not be called to the chair, shall attend, or shall continue at or near the place of meeting until it shall have dispersed, and shall afford all the assistance in their power in preserving the public peace. (*Ib.* s. 9.)

CHAIRMAN TO MAKE PROTECTION.—Every person required by law, or who has in the usual way been appointed at such public meeting to preside over the same, shall commence the proceedings of the meeting by causing the summons or notice calling the meeting, or the declaration to be publicly read. (*Ib.* s. 10.)

CHAIRMAN TO REMOVE DISORDERLY PERSONS.—The chairman shall cause order to be kept at such meetings, and may by oral direction or otherwise, cause any person who attempts to interrupt such meeting to be removed to such a distance from the same as may effectually prevent disturbance; and by an instrument in writing under his hand, and on his own view, may adjudge any person who so attempts to interrupt or disturb such meeting guilty of such attempted interruption, upon which conviction any Justice of the Peace may by warrant commit such person to the common gaol for any period not

exceeding forty-eight hours from time of committal signed, and until lawful costs of the constable and gaoler be paid and satisfied. (*Ib.* s. 11.)

CHAIRMAN MAY CALL ON JUSTICE.—For the purpose of keeping the peace and preserving order to every such public meeting, the person presiding may command the assistance of Justices of the Peace, constables, and other persons to aid him in so doing. (*Ib.* s. 12.)

SPECIAL CONSTABLES.—"Any Justice present at such meeting, upon the written application of the chairman, shall swear in such number of special constables as may be deemed necessary for the preservation of the public peace at such meeting." (*Ib.* s. 13.)

REFUSING TO BE SWORN AS CONSTABLE. — If any person between the ages of eighteen and sixty, upon being requested to be sworn in as special constable by any Justice of the Peace upon any such occasion, omits or refuses to be sworn in, unless from cause to be allowed by the Justice at the time, such person shall be guilty of a misdemeanor; and such Justice may thereupon record the refusal of such person so to be sworn in, and adjudge him to pay a fine of not more than eight dollars, which fine shall be levied and made by the like process as other fines imposed by summary proceedings before Justices of the Peace, or such person may be proceeded against by indictment. (*Ib.* s. 14.)

JUSTICE MAY DISARM.—Any Justice of the Peace within whose jurisdiction meetings are appointed to be holden, may demand, have and take of and from any person attending such meeting, or on his way to attend the same, any offensive weapon, whether fire-arms, swords, stones, or the like with which such person may be armed, or have in his hands or possession; and if he refuse to deliver any such up peaceably, he shall be deemed guilty of a misdemeanor, and may be adjudged to pay a fine of not more than eight dollars; and if this be not paid, he may be proceeded against by indictment and information. But such weapon may, meanwhile, be taken from such person by such force as may be necessary. (*Ib.* s. 15.)

WEAPONS MAY BE RETURNED.—"Upon reasonable request to any Justice of the Peace to whom such weapon may have been peaceably and quietly delivered, made on the day after the meeting has dispersed, such weapon, if of the value of one dollar, may be returned." (*Ib.* s. 16.)

IF WEAPONS LOST.—No Justice shall be liable to return such weapon, or make good the value thereof, in case the same by unavoidable accident has been actually destroyed or lost out of the possession of such Justice, without his wilful default. (*Ib.* s. 17.)

BATTERY.—"Any person convicted of battery within two miles of the place of such meeting, on any part of the day, shall be punishable by a fine of not more than one hundred dollars, or imprisonment for not more than three months, in the discretion of the court." (*Ib.* s. 18.)

NO ONE TO APPROACH ARMED.—"Except the high sheriff, under-sheriff, and Justices of the Peace for the district, the mayor and high bailiff, and the constables or special constables employed by them or any of them, no person shall during any part of the day of meeting come within two miles of the place armed with any offensive weapons; and any person offending against this provision shall be guilty of a misdemeanor punishable with fine not exceeding one hundred dollars, or imprisonment not exceeding three months, or both, at the discretion of the court." (*Ib.* s. 19.)

PERSONS LYING IN WAIT.—Any person lying in wait for any person returning or expected to return from any such public meeting, with intent to commit any assault upon such person, or with intent by abusive language, opprobrious epithets or other offensive demeanor directed to, at or against such person, to provoke such person, or those who may accompany him, to a breach of the peace, shall be guilty of a misdemeanor punishable by fine not exceeding two hundred dollars, and imprisonment not exceeding six months, or both, at the discretion of the court. (*Ib.* s. 20.)

LIMITATION OF ACTIONS.—"Every action to be brought against any person for anything by him done under authority of this act must be brought within twelve months next after the cause of such action occurred." (*Ib.* s. 21.)

PUBLIC OFFICERS—OFFENCES BY.

These may be classed under one of four heads, viz.: *malfeasance, nonfeasance, extortion* or *refusal to execute an office.*

MALFEASANCE.—It is a general rule that an officer is indictable for misbehaviour in his office, and where the act done is clearly illegal, it is not necessary to show that it was done with corrupt motives. A gaoler is punishable for barbarously ill-using his prisoner.

Every malfeasance or culpable nonfeasance of an officer of justice is an indictable misdemeanor, punishable with fine or imprisonment, or both.*

NONFEASANCE.—Where an officer is bound by virtue of his office to perform an act, the neglect to perform that act is an indictable offence. Thus coroners, constables, sheriffs, &c., are indictable for not performing their several duties.†

EXTORTION.—Extortion is the taking of money by a public officer under colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. It is a misdemeanor punishable by fine or imprisonment, or both. And, generally, no public officer shall take any other fees or rewards for doing anything relating to his office than some statute in force gives him, or else as hath been anciently and accustomably taken; and if he do otherwise he is guilty of extortion.

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* On an information for malfeasance it is not necessary to prove that he was such officer, nor is it necessary to prove that he had notice of all the facts alleged, if it was his official duty to know them.

† On an information for nonfeasance it must be proved, 1. That the defendant holds the office; 2. That it was his duty, and within his power, to perform the particular act; and 3. That he neglected to do so.

ASSESSORS.—If any assessor or clerk refuses or neglects to perform any duty required of him by this act, he shall for every such offence, upon conviction thereof before the recorder's court of the city, or before the court of General Quarter Sessions of the county in which he is assessor or clerk, forfeit the sum of one hundred dollars to her Majesty." (Con. Stat. U. C. c. 55, s. 171.)

"If any clerk, assessor or collector, acting under this act, makes any unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or omits the name of any person who should be entered, or wilfully omits any duty required of him by this act, he shall be guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction shall be liable to a fine not exceeding two hundred dollars, and to imprisonment until the fine be paid, or to imprisonment in the common gaol of the county or city for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the court. (*Ib.* s. 173.)

"Proof to the satisfaction of the jury, that any real property was assessed by the assessor at an actual yearly value greater or less than its true actual or yearly value by thirty per centum thereof, shall be *prima facie* evidence that the assessment was fraudulent and unjust." (*Ib.* s. 174.)

"An assessor convicted of having made any fraudulent and unjust assessment, shall be sentenced to the greatest punishment both of fine and imprisonment allowed by this act." (*Ib.* s. 175.)

"With reference to Upper Canada Jurors' Act, if an assessor of any township, village or ward, neglects or omits to make out and complete his assessment roll for the township, village or ward, and to return the same to the office of the clerk of such township or village, or of the city or town in which any such ward is situated, or to the other office or place of deposit for such roll, on or before the first day of September of the year for which he is assessor, every such assessor so offending

shall forfeit for every such offence the sum of two hundred dollars, one moiety thereof to the use of her Majesty, and the other moiety with full costs to such person as may sue for the same in any court of competent jurisdiction, by action of debt or information; but nothing herein contained shall be construed to relieve any assessor from the obligation of returning his assessment roll at an earlier period of the year, or from the penalty he may incur by not returning the same accordingly." (*Ib.* s. 176.)

TRUSTEES OF POLICE VILLAGES.—"Any police trustee who wilfully neglects or omits to prosecute an offender at the request of any resident householder of the village offering to adduce proof of an offence against the regulations of police herein established, or who wilfully neglects or omits to fulfil any other duty imposed on him by this act, shall incur a penalty of five dollars." (Con. Stat. U. C. c. 54, s. 308.)

"The penalties prescribed by the preceding section, or by that for the establishment of regulations of police, shall be sued for within ten days after the offence has been committed or has ceased, and not subsequently." (*Ib.* s. 309.)

REVENUE OFFICERS.—"If any officer, or any person acting in any office or employment connected with the collection and management of the revenue or the accounting for the same, takes or receives, directly or indirectly, any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatsoever, from any person, not being an officer or person legally authorized to pay or allow the same, on account of anything done by him in any way relating to his office or employment, except such as he receives by order or with the permission of the Governor in council, every such officer or person so offending shall, on proof to the satisfaction of the Governor, be dismissed from his office or employment." (Con. Stat. C. c. 16, s. 30.)

DIVISION COURT OFFICERS, MISCONDUCT OF.—If any division court officer, acting under colour or pretence of process of the court, be guilty of extortion or misconduct, or does not duly

pay or account for all money levied or received by him by virtue of his office, the Judge, at any sitting of the court, if complaint be made to him in writing, may inquire into the matter in a summary way, and may make such order thereupon for the repayment of any money extorted, or for the payment of any money received, and for the payment of damages and costs, and in default of payment after warrant may commit the party to prison. (See Con. Stat. U. C. c. 19, s. 185.)

EXTORTION.—"If any clerk, bailiff, or other officer exacts or takes any fee or reward other than the fees appointed and allowed by law for or on account of anything done by virtue of his office, or on any account relative to the execution of this act, he shall, upon proof thereof before the court, be for ever incapable of being employed in a division court in any office of profit or emolument, and shall also be liable in damages to the party aggrieved."* (*Ib.* s. 186.)

RAPE.

"Every person guilty of the crime of rape shall suffer death as a felon." (Con. Stat. C. c. 91, s. 19.)

OFFENCE DEFINED.—Rape is the offence of having carnal knowledge of a woman by force, against her will, and is a capital offence.

A boy under fourteen years of age is, in law, incapable of committing a rape; and if he be under that age, no evidence will be admitted to shew that in point of fact he could commit the offence.

In an indictment for rape, the party ravished is an admissible witness; but the value of her testimony must be left to

* This and the former clause do not in any way deprive the Justice of his power to investigate complaints against any division court officer for extortion or misconduct.

In those two or three counties where the division court Judge is dissipated or otherwise unfit for his office, some few of the clerks and bailiffs misconduct themselves. In the counties referred to, the Justices should instruct the county detective to pay particular attention to the misconduct of those officers; and when a case of extortion is discovered, the crown attorney should be requested to have it tried at the supreme court, and not before the Judge of whose ability or honesty there is a doubt.

the jury. For instance, if the witness be of good fame, if she presently discovered the offence, and made search for the offender; if the party accused fled for it; these are corroborative circumstances, which give greater probability to her testimony. But, on the other hand, if she concealed the injury after she had an opportunity to complain of its perpetration; if the place where the fact is alleged to have been committed is where it was possible she might have been heard, and made no outcry, these carry a strong, but not conclusive, presumption that her testimony is false and feigned.

Moreover, an assault to ravish, however shameless and outrageous it may be, unless it amount to some degree of consummation of the deed, is not a rape.

It is the essential character of this crime, that it must be against the will of the female on whom it is committed. And if a woman be beguiled into her consent by any artful means, it will not be a rape; and, therefore, having carnal knowledge of a married woman under circumstances which induced her to suppose it was her husband, was held by a majority of the judges not to be a rape. However, the crime is not mitigated by shewing that the woman yielded at length to violence, if her consent were obtained by duress, or threats of murder; nor will any subsequent acquiescence on her part do away with the guilt of the ravisher. It is a rape to force a prostitute against her will: so it is for a man to have forcible copulation with his own concubine, because the law presumes the possibility of a return to virtue. A man, however, cannot be guilty of a rape upon his own wife, for the marital consent cannot be retracted; but he may be a criminal in aiding and abetting another in such a design.

All who are present, of both sexes, aiding in the perpetration of rape, are punishable.

Evidence.—"It shall not be necessary upon the trial of any person for the crime of buggery or of rape, mentioned in the eighteenth and fifteenth sections, or of carnally abusing girls under the respective ages of ten and twelve years, mentioned in the sixteenth and seventeenth sections of the act respecting

offences against the person, to prove the emission of seed in order to contribute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only." (Con. Stat. C. c. 99, s. 70.)

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RECEIVING STOLEN GOODS.

RECEIVING EMBEZZLED GOODS.—"If any person receives any chattel, money, or valuable security which has been so fraudulently disposed of as to render the party disposing thereof guilty of a misdemeanor under any of the provisions of the nine preceding sections of this act,* knowing the same to have been so fraudulently disposed of, he shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the party guilty of the principal misdemeanor has or has not been previously convicted or has or has not been amenable to justice." (Con. Stat. C. c. 92, s. 60.)

WHEN A MISDEMEANOR.—"If any person receives any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made an indictable misdemeanor by this act, excepting sections fifty-one to sixty-seven, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted, such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor has or has not been previously convicted thereof, or has or has not been amenable to justice; and every such receiver shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 75.)

WHEN FELONY.—"If any person receives any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof amounts to a felony either at com-

* See article "Embezzlement," *ante*, p. 225.

mon law or by virtue of this act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony; and in the latter case, whether the principal felon has or has not been previously convicted, or be or be not amenable to justice." (*Ib.* s. 76.)

"Every such receiver, howsoever convicted, shall be imprisoned in the penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years; and no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence." (*Ib.* s. 77.)

VENUE.—"If any person receives any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, or converted, such person, whether charged as an accessory after the fact to the felony or with a substantive felony, or with a misdemeanor only, may be dealt with, tried, and punished in any district, county, or place in which he has had any such property in his possession, or in any district, county, or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the district, county, or place where he actually received such property." (Con. Stat. C. c. 99, s. 15.)

"Any person who in any part of this province receives or has any chattel, money, valuable security, or other property whatsoever, which has been stolen or otherwise unlawfully taken in any other part of her Majesty's dominions, knowing the said property to have been stolen or otherwise unlawfully taken, may be dealt with, indicted, tried, and punished for such offence in that part of this province where he so received or had the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of Canada." (*Ib.* s. 16.)

"If upon the trial of two or more persons indicted for jointly receiving any property, it be proved than one or more of such persons separately received any part of the property, the jury may convict such of the said persons as are proved to have received any part of such property." (*Ib.* s. 38.)

RECORDERS' COURTS AND POLICE MAGISTRATES.

JURISDICTION OF RECORDERS' COURTS.—"There shall be in every city a court of record, to be called the Recorder's Court of the city; and therein the recorder alone, or assisted by one or more of the aldermen, shall preside; or in the absence of the recorder, or when there is no recorder, the mayor (and in his absence one of the aldermen elected by themselves), assisted by one or more aldermen, shall preside; and the court shall, as to crimes and offences committed in the city, and as to matters of civil concern therein, have the same jurisdiction and powers and use the like proceedings as courts of Quarter Sessions of the Peace in counties." (Con. Stat. U. C. c. 54, s. 370.)

RECORDERS AND POLICE MAGISTRATES TO BE JUSTICES OF THE PEACE.—"Every recorder and police magistrate shall be appointed by the crown, and shall hold office during the pleasure of the crown; and shall *ex officio* be a Justice of the Peace for the city or town for which he holds office, as well as for the county in which the city or town is situate." (*Ib.* s. 375.)

THE CLERK.—"The clerk of the council of every city or town, or such other person as the council of the city or town may appoint for that purpose, shall be the clerk of the police office thereof, and perform the same duties and receive the same emoluments as clerks of Justices of the Peace; and the city clerk, or such other person as the council of the city may appoint for that purpose, shall also be clerk of the recorder's court, and shall perform the same duties and receive the same emoluments as clerks of the Peace; and in case the said clerk or other person is paid by a fixed salary, the said emoluments shall be paid by him to the municipality, and form part of its funds." (*Ib.* s. 376.)

TIME FOR HOLDING OF RECORDERS' COURTS.—"The recorder's court shall hold four sessions every year; and such sessions shall commence on the first Monday in the months of March, June, and September, and on the third Monday in December." (25 Vic. c. 19, s. 3.)

COSTS.—"On the acquittal of any person tried for misdemeanor in a recorder's court, the presiding officer shall, if the court is satisfied that there was reasonable and probable cause for the prosecution, order the costs thereof to be taxed by the clerk, and to be paid out of the city funds." (Con. Stat. U. C. c. 54, s. 380.)

EXPENSES OF RECORDER'S COURT.—"The expenses of the administration of justice in criminal cases in the recorder's court shall be defrayed out of the consolidated revenue fund, in like manner and to the like extent as the expenses attending the administration of justice in criminal cases in the several courts of Quarter Sessions in Upper Canada." (*Ib.* s. 381.)

POWER OF RECORDER AND POLICE MAGISTRATE.—"Where any person is charged before the recorder of any city with having committed—

1. "Simple larceny, and the value of the whole of the property alleged to have been stolen does not in the judgment of such recorder exceed one dollar; or

2. "With having attempted to commit larceny from the person; or

3. "With simple larceny; or

4. "With having committed an aggravated assault, by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously cutting, stabbing or wounding any other person; or

5. "With having committed an assault upon any female whatever, or upon any male child whose age does not in the opinion of such recorder exceed fourteen years, such assault being of a nature which cannot in the opinion of the recorder be sufficiently punished by a summary conviction before him

under any other act, and such assault, if upon a female, not amounting in his opinion to an assault with intent to commit a rape; or

6. "With having assaulted any magistrate, bailiff, or constable or other officer in the lawful performance of his duty, or with intent to prevent the performance thereof; or

7. "With keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy house;

"Such recorder may hear and determine the charge in a summary way." (Con. Stat. C. c. 105, s. 1.)

CONSENT OF ACCUSED.—"Whenever the recorder before whom any person is charged as aforesaid proposes to dispose of the case summarily under the provisions of this act, such recorder, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the party charged for any statement he may wish to make, shall state to such person the substance of the charge against him, and if it is in the election of the person charged, shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it could soonest be tried*);" and if the person charged consents to the charge being summarily tried and determined as aforesaid, or if it is a case not within the election of the person charged, the recorder shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge." (*Ib.* s. 2.)

PLEADING.—"If the person charged confesses the charge, the recorder shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this act, in respect to such offence; but if the person charged says that he is not guilty, the recorder shall then examine the witnesses for the prosecution; and when the examination has been completed, the recorder shall enquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence, the recorder shall hear such defence, and shall then proceed to dispose of the case summarily." (*Ib.* s. 3.)

PUNISHMENT.—"In case of larceny charged under the first, second or third sub-sections of the first section of this act, if the recorder, after hearing the whole case for the prosecution and for the defence, finds the charge proved, then such recorder shall convict the person charged and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labor, for any period not exceeding three months." (*Ib.* s. 4.)

FORMS.—"Every such conviction and certificate respectively may be in the forms A and B, in this act, or to the like effect." (*Ib.* s. 5.)

DISMISSAL.—"If in any case the recorder finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal." (*Ib.* s. 6.)

WHEN NO SUMMARY TRIAL GRANTED.—"When being in the election of the person charged he does not consent to have the case heard and determined by the recorder, or in any case if it appears to the recorder that the offence is one which, owing to a previous conviction of the person charged, is by law a felony, or if such recorder be of opinion that the charge is from any other circumstances fit to be made the subject of prosecution by indictment rather than to be disposed of summarily, such recorder shall deal with the case in all respects as if this act had not been passed." (*Ib.* s. 7.)

DISMISSAL.—"If upon the hearing of the charge such recorder is of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, he may dismiss the person charged without proceeding to a conviction." (*Ib.* s. 8.)

LARCENIES OVER ONE DOLLAR.—"Where any person is charged before any such recorder with simple larceny of property exceeding in value one dollar, or with stealing from the person, or with larceny as a clerk or servant, and the evidence in support of the prosecution is in the opinion of the recorder sufficient to put the person charged on his trial for

the offence charged, such recorder, if the case appear to him to be one which may be properly disposed of in a summary way, and may be adequately punished by virtue of the powers of this act, shall reduce the charge into writing, and shall read it to the said person, and shall then explain to him that he is not obliged to plead or answer before such recorder at all, and that if he do not plead or answer before him he will be committed for trial in the usual course." (*Ib.* s. 9.)

PLEA OF GUILTY.—"The recorder shall then ask him whether he is guilty or not of the charge, and if such person says that he is guilty, such recorder shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of the offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six months, and every such conviction may be in the form C, or to the like effect." (*Ib.* s. 10.)

DEFENCE.—"In every case of summary proceedings under this act, the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined, by counsel or attorney." (*Ib.* s. 11.)

COMPELLING ATTENDANCE.—"The recorder before whom any person is charged under this act may by summons require the attendance of any person as a witness upon the hearing of the case, at a time and place to be named in such summons; and such recorder may bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge; and in case any person so summoned or required or bound as aforesaid neglects or refuses to attend in pursuance of such summons or recognizance, then upon proof being first made of such person's having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the recorder before whom such person ought to have attended may issue a warrant to compel his appearance as a witness." (*Ib.* s. 12.)

SERVICE OF SUMMONS.—"Every summons issued under this act may be served by delivering a copy of the summons to the party summoned, or by delivering a copy of the summons to some inmate of such party's usual place of abode; and every person so required by any writing under the hand of any recorder to attend and give evidence as aforesaid shall be deemed to have been duly summoned." (*Ib.* s. 13.)

JURISDICTION.—"The jurisdiction of the recorder in the case of any person charged within the police limits of any city in this province with therein keeping or being an inmate or an habitual frequenter of any disorderly house, house of ill-fame or bawdy house, shall be absolute, and shall not depend on the consent of the party charged to be tried by such recorder, nor shall such party be asked whether he consents to be so tried." (*Ib.* s. 14.)

PUNISHMENTS.—"In any case summarily tried under the fourth, fifth, sixth or seventh sub-sections of the first section of this act, if the recorder finds the charge proved, he may convict the person charged and commit him to the common gaol or house of correction, there to be imprisoned with or without hard labour for any period not exceeding six months, or may condemn him to pay a fine not exceeding, with costs in the case, one hundred dollars, or to both fine and imprisonment, not exceeding the said period and sum; and such fine may be levied by warrant of distress under the hand and seal of such recorder, or the party convicted may be condemned (in addition to any other imprisonment on the same conviction) to be committed to the common gaol for a further period not exceeding six months, unless such fine be sooner paid." (*Ib.* s. 16.)

FORMS.—"In such cases as last aforesaid, the forms given at the end of this act shall be altered, by omitting the words stating the consent of the party to be tried before the recorder, and by adding the requisite words stating the fine imposed (if any) and the imprisonment (if any) to which the party convicted is to be subject if the fine be not sooner paid." (*Ib.* s. 17.)

REMAND.—"Where any person is charged before any Justice or Justices of the Peace with any offence mentioned in this act, and in the opinion of such Justice or Justices the case may be proper to be disposed of by a recorder or by an inspector and superintendent of the police, or by a police magistrate, as herein provided, the Justice or Justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the recorder or before the inspector and superintendent of the police of the nearest city, or before the nearest police magistrate, in like manner in all respects as a Justice or Justices are authorized to remand a party accused under the general act respecting the duties of Justices of the Peace out of sessions in like cases." (*Ib.* s. 18.)

"No Justice or Justices of the Peace in Upper Canada shall so remand any person for further examination before any recorder, inspector, and superintendent of police, or police magistrate in Lower Canada, nor shall any Justice or Justices of the Peace in Lower Canada so remand any person for further examination before any recorder or police magistrate in Upper Canada." (*Ib.* s. 19.)

"Any person so remanded for further examination before the recorder of any city may be examined and dealt with by the inspector and superintendent of the police or police magistrate of the same city; and any person so remanded for further examination before the inspector and superintendent of the police or the police magistrate of any city, may be examined and dealt with by the recorder of the same city." (*Ib.* s. 20.)

"If any person suffered to go at large upon entering into such recognizance as the Justice or Justices are authorized under the last mentioned act to take, on the remand of a party accused, conditioned for his appearance before a recorder under the preceding sections of this act, does not afterwards appear pursuant to such recognizance, then the recorder before whom he ought to have appeared shall certify (under his hand) on the back of the recognizance, to the clerk of the peace of the district in Lower Canada, or county or union of counties in

Upper Canada, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *primâ facie* evidence of such non-appearance." (*Ib.* s. 21.)

RETURN OF CONVICTIONS.—"The recorder adjudicating under this act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of Quarter Sessions for the district in Lower Canada, or the county or union of counties in Upper Canada, there to be kept by the proper officer among the records of the court." (*Ib.* s. 22.)

COPY OF CONVICTION.—"A copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein., in any legal proceeding whatever." (*Ib.* s. 23.)

RESTITUTION.—"The recorder by whom any person has been convicted under this act may order restitution of the property stolen, taken, or obtained by false pretences, in those cases in which the court before whom the person convicted would have been tried but for this act might by law order restitution." (*Ib.* s. 24.)

OPEN COURT.—"Every recorder's court, for the purposes of this act, shall be an open public court, and a written or printed notice of the day and hour for holding such court shall be posted or affixed by the clerk of the said court upon the outside of some conspicuous part of the building or place where the same is held." (*Ib.* s. 25.)

DUTIES OF JUSTICES NOT AFFECTED.—"The provisions of the act respecting the duties of Justices of the Peace out of sessions, in relation to summary convictions and orders, and the provisions of the act respecting the duties of Justices of the Peace out of sessions in relation to persons charged with indictable offences, shall not be construed as applying to any proceeding under this act." (*Ib.* s. 26.)

EFFECT OF CONVICTION.—"Every conviction by a recorder under this act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this act shall be attended with forfeiture." (*Ib.* s. 27.)

CERTIFICATE OF DISMISSAL.—"Every person who obtains a certificate of dismissal, or is convicted under this act, shall be released from all further or other criminal proceedings for the same cause." (*Ib.* s. 28.)

WANT OF FORM.—"No conviction, sentence, or proceeding under this act shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same." (*Ib.* s. 29.)

JURISDICTION OF POLICE MAGISTRATES.—"The inspector and superintendent of police for the city of Quebec, the inspector and superintendent of police for the city of Montreal, and the police magistrate for any city in Upper Canada, sitting in open court, may respectively, in the case of persons charged before them, do all acts by this act authorized to be done by recorders, and all the provisions of this act referring to recorders and recorders' courts shall be read and construed also as referring to such inspectors and superintendents of the police and police magistrates and the courts and the clerks of the courts held by them respectively, and as giving them full power to do all acts authorized to be done by recorders in the case of persons charged before them respectively." (*Ib.* s. 30.)

JUVENILE OFFENDERS.—"Nothing in this act shall affect the provisions of the act respecting the trial and punishment of juvenile offenders; and this act shall not extend to persons punishable under that act, so far as regards offences for which such persons may be punished thereunder." (*Ib.* s. 34.)

PAYMENT AND APPLICATION OF FINES.—"Every fine imposed under the authority of this act shall be paid to the recorder, superintendent of police, sheriff, deputy sheriff, or Justice of

the Peace who has imposed the same, or to the clerk of the recorder's court or clerk of the peace, as the case may be, and shall be by him or them paid over to the county treasurer, for county purposes, if it has been imposed in Upper Canada." (*Ib.* s. 35.)

"In the interpretation of this act, 'property' shall be construed to include everything included under the words 'chattel, money, or valuable security,' as used in the act respecting offences against person and property; and in case of any 'valuable security,' the value of the share, interest, or deposit to which the security may relate, or of the money due thereon or secured thereby and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security." (*Ib.* s. 36.)

FORM A.—(*See* s. 5.)—CONVICTION.

——— } Be it remembered, that on the —— day of ——, in the year of
to wit. } our Lord ——, at ——, A. B. being charged before me the undersigned ——, of the said city, and consenting to my deciding upon the charge summarily, is convicted before me, for that he the said A. B., &c. (*stating the offence, and the time and place when and where committed*); and I adjudge the said A. B., for his said offence, to be imprisoned in the —— (and there kept to hard labour) for the space of ——.

Given under my hand and seal, the day and year first above mentioned, at —— aforesaid. J. S. [L. S.]

FORM B.—(*See* s. 5.)—CERTIFICATE OF DISMISSAL.

——— } I, the undersigned, —— of the city of ——, certify that on the
to wit. } —— day of ——, in the year of our Lord ——, at —— aforesaid, A. B. being charged before me, and consenting to my deciding upon the charge summarily, for that he the said A. B. (*stating the offence charged, and the time and place when and where alleged to have been committed*), I did, having summarily adjudicated thereon, dismiss the said charge.

Given under my hand and seal, this —— day of ——, at —— aforesaid.
J. S. [L. S.]

FORM C.—(*See* s. 10.)—CONVICTION UPON A PLEA OF GUILTY.

——— } Be it remembered that on the —— day of ——, in the year of
to wit. } our Lord ——, at ——, A. B. being charged before me the undersigned —— of the said city, for that he the said A. B., &c. (*stating the offence, and the time and place when and where committed*), and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him the said A. B., for his said offence, to be imprisoned in the —— (and there kept to hard labour) for the space of ——.

Given under my hand and seal, the day and year first above mentioned, at —— aforesaid. J. S. [L. S.]

RAILWAYS—OFFENCES RELATING TO.

RAILWAYS NOT TO BE CARRIED ALONG AN EXISTING HIGHWAY WITHOUT LEAVE FROM MUNICIPALITY. — "The highways and bridges shall be regulated as follows:

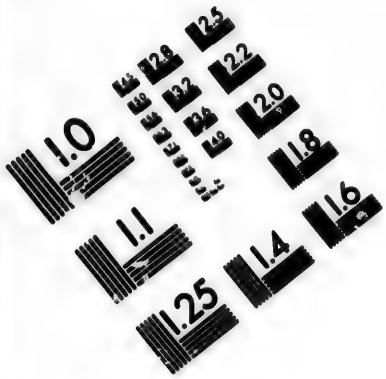
1. "The railway shall not be carried along an existing highway, but merely cross the same in the line of the railway, unless leave has been obtained from the proper municipal authority therefor; and no obstruction of such highway with the works shall be made without turning the highway so as to leave an open and good passage for carriages; and, on completion of the works, replacing the highway, under a penalty of forty dollars for any contravention; but in either case, the rail itself, provided it does not rise above or sink below the surface more than one inch, shall not be deemed an obstruction.

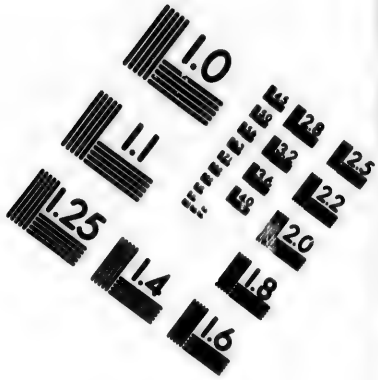
2. "No part of the railway which crosses any highway without being carried over by a bridge, or under by a tunnel, shall rise above or sink below the level of the highway more than one inch, and the railway may be carried across or above any highway within the limits aforesaid.

3. "The space of the arch of any bridge erected for carrying the railway over or across any highway shall at all times be and be continued of the open and clear breadth and space, under such arch, of not less than twenty feet, and of a height from the surface of such highway to the centre of such arch of not less than twelve feet, and the descent under any such bridge shall not exceed one foot in twenty.

4. "The ascent of all bridges for carrying any highway over any railway shall not be more than one foot in twenty feet increase over the natural ascent of the highway, and a good and sufficient fence shall be made on each side of every bridge, which fence shall not be less than four feet above the surface of the bridge.

"Signboards, stretching across the highway crossed at a level by any railway, shall be erected and kept up at each crossing, at such height as to leave sixteen feet from the highway to the lower edge of the signboard, and having the words 'railway crossing' painted on each side of the signboard, in





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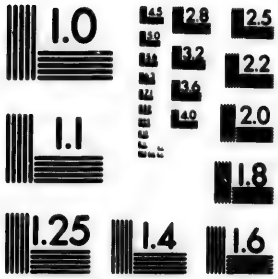

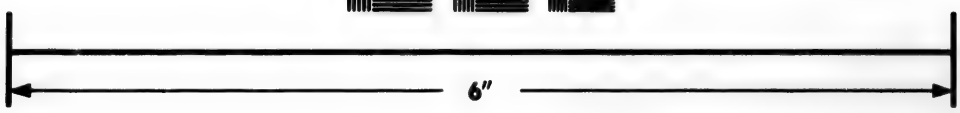

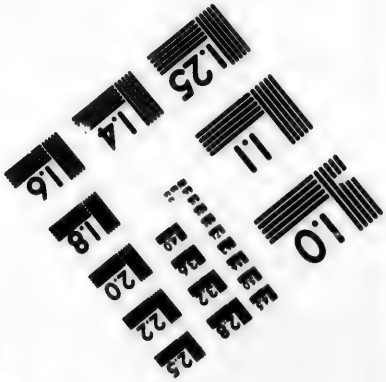

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letters not less than six inches in length; and for every neglect to comply with the requirements of this clause, a penalty not exceeding forty dollars shall be incurred." (Con. Stat. C. c. 66, s. 12.)

FENCES.—"Fences shall be erected and maintained on each side of a railway of the height and strength of an ordinary division fence, with openings or gates or bars therein at farm-crossings of the road, for the use of the proprietors of the land adjoining; and also cattle-guards at all road-crossings, suitable and sufficient to prevent cattle and animals from getting on the railway." (*Ib.* s. 13.)

RIDING, &c., ON THE TRACK.—"If any person rides, leads or drives any horse or other animal upon such railway and within fences and guards other than the farm-crossings, without the consent of the company, he shall for every such offence forfeit a sum not exceeding forty dollars, and shall also pay to the party aggrieved all damages sustained thereby." (*Ib.* s. 17.)

"No person other than those connected with or employed by the railway shall walk along the track thereof, except where the same is laid across or along a highway." (*Ib.* s. 18.)

OBSTRUCTING RAILWAYS.—"Every person who, by any means or in any manner or way whatsoever, obstructs or interrupts the free use of the railway, or the carriages, vessels, engines, or other works incidental or relative thereto or connected therewith, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the common gaol of the district or county where the conviction takes place, or in the provincial penitentiary, for a term not to exceed five years." (*Ib.* s. 84.)

DAMAGING RAILWAYS.—"All persons wilfully and maliciously, and to the prejudice of the railway, breaking, throwing down, damaging, or destroying the same, or any part thereof, or of any of the buildings, stations, depots, wharves, vessels, fixtures, machinery, or other works or devices incidental and relative thereto, or connected therewith, or doing any other wilful hurt or mischief, or wilfully or maliciously

obstructing or interrupting the free use of the railway, vessels, or works, or obstructing, hindering, or preventing the carrying on, completing, supporting, and maintaining the railway, vessels, or works, shall be guilty of a misdemeanor, unless the offence committed amounts, under some other act or law, to a felony, in which case such person shall be guilty of a felony, and the court by and before whom the person is tried and convicted may cause such person to be punished in like manner as persons guilty of misdemeanor or felony (*as the case may be*) are directed to be punished by the laws in force in this province." (*Ib.* s. 85.)

FINES, HOW RECOVERED.—"All fines and forfeitures imposed by this act or the special act, or by any by-law, the levying and recovering of which are not particularly herein directed, shall, upon proof of the offence before any one or more Justices of the Peace for the district, county, or place where the act occurred, either by the confession of the party or by the oath or affirmation of any one credible witness, to be administered without fee or reward, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal, or hands and seals, of such Justice or Justices." (*Ib.* s. 86.)

HOW APPLICABLE.—"All fines, forfeitures, and penalties, the application of which is not herein before particularly directed, shall be paid into the hands of the treasurer of the company, to be applied to the use thereof; and the overplus of the money so raised, after deducting the penalty and the expenses of the levying thereof, shall be returned to the owner of the goods so distrained and sold." (*Ib.* s. 87.)

COMMITMENT.—"In case sufficient goods and chattels whereof to levy the penalty and expenses are not found, the offender shall be sent to the common gaol, there to remain without bail for such term not exceeding one month as the Justice or Justices think proper, unless the penalty or forfeiture and all expenses attending the same, be sooner paid and satisfied." (*Ib.* s. 88.)*

* Some *fixed* time of imprisonment, less than a month, should be stated in the warrant.

APPEAL.—"Every such person or persons may, within four months after the conviction, appeal against the same to the court of general Quarter Sessions to be holden in and for the county or district." (*Ib.* s. 89.)

OFFENCE AGAINST THIS ACT TO BE A MISDEMEANOR.—"All contraventions of this act or of the special act,* by the company or by any other party, for which no punishment or penalty is herein provided, shall be a misdemeanor, and shall be punishable accordingly; but such punishment shall not exempt the company, if they be the offending party, from the forfeiture by this act and the special act of the privileges conferred on them by the said acts, if by the provisions thereof or by law the same be forfeited by such contravention." (*Ib.* s. 90.)

CHECKS ON PARCELS.—"Checks shall be affixed by an agent or servant to every parcel of baggage having a handle, loop, or fixture of any kind thereupon, and a duplicate of such check shall be delivered to every passenger delivering the same." (*Ib.* s. 99.)

"If such check be refused on demand, the company shall pay to such passenger the sum of eight dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger; and if he has paid his fare, the same shall be refunded by the conductor in charge of the train." (*Ib.* s. 100.)

"Any passenger producing such check may himself be a witness in any suit brought by him against the company, to prove the contents and value of such baggage not delivered to him." (*Ib.* s. 101.)

BAGGAGE-CARS NOT TO BE IN REAR OF PASSENGER-CARS.—"The baggage, freight, merchandize, or lumber-cars, shall not be placed in rear of the passenger-cars; and if any such be so placed, the officer or agent directing or knowingly suffering

* That is, the act authorizing the construction of the railway.

such arrangement, and the conductor of the train, shall respectively be guilty of a misdemeanor, and be punished accordingly." (*Ib.* s. 102.)

ENGINE TO HAVE BELL.—"Every locomotive engine shall be furnished with a bell of at least thirty pounds weight, or with a steam whistle." (*Ib.* s. 103.)

TO RING BELL, &c.—"The bell shall be rung or whistle sounded at the distance of at least eighty rods from every place where the railway crosses any highway, and be kept ringing or be sounded at short intervals until the engine has crossed such highway, under a penalty of eight dollars for every neglect thereof, to be paid by the company, who shall also be liable for all damages sustained by any person by reason of such neglect, one-half of which penalty and damages shall be chargeable to and collected by the company from the engineer having charge of such engine, and neglecting to sound the whistle or ring the bell as aforesaid." (*Ib.* s. 104.)

INTOXICATION OF ENGINEER OR CONDUCTOR.—"All persons in charge of a locomotive engine, or acting as conductor of a car or train of cars, who is intoxicated, shall be guilty of a misdemeanor."* (*Ib.* s. 105.)

RAILWAY GROUND TO BE KEPT IN ORDER.—"Every railway company shall cause all cleared land adjoining their railway to be sown or laid down with grass or turf, and cause all thistles and other noxious weeds growing on such land or grounds to be cut down, and to be kept constantly down, or to be rooted out of the same." (*Ib.* s. 134.)

"If such company fails to comply with the requirements of the act, within twenty days after they have been noticed by the mayor, reeve, or chief officer of the municipality of the township or county in which the ground lies, the company will incur a penalty of two dollars for every day of such neglect;

* The constable residing in the neighbourhood of a railway should be instructed to see that this section is complied with. It is far better that the question as to whether or not the bell was rung or whistle sounded, or the engineer or conductor intoxicated, should come up before a Justice before an accident, than before a coroner and jury after loss of life]

and during this time said reeve, &c., may cause the work to be done which the company neglected, and such municipality may recover all expenses and charges, as well as the penalty, with costs, in any court having jurisdiction." (*Ib.* s. 135.)

IMPEDING NAVIGATION. — "No company shall cause any obstruction in or impede the navigation of any river, stream or canal, to or across or along which their railway is carried." (*Ib.* s. 136.)

TRAINS GOING THROUGH CITIES, &c.—"No locomotive or railway engine shall pass in or through any thickly-peopled portion of any city, town or village, at a speed greater than six miles per hour, unless the track is properly fenced." (*Ib.* s. 144.)

"Whenever any train of cars is moving reversely in any city, town or village, the locomotive being in the rear, the company shall station on the last car in the train a person who shall warn parties standing on or crossing the track of such railway of the approach of such train, under a penalty of one hundred dollars for any contravention of the above provision." (*Ib.* s. 145.)

LEAVING CATTLE AT LARGE.—"No horses, sheep, swine, or other cattle, shall be permitted to be at large upon any highway within half a mile of the intersection of such highway with any railway on grade, unless such cattle are in charge of some person or persons to prevent their loitering or stopping on such highway at such intersection." (*Ib.* s. 147.)

SUCH CATTLE MAY BE IMPOUNDED.—"All cattle found at large in contravention of the last preceding section may, by any person finding the same at large, be impounded in the nearest pound to the place where the same are so found, and the pound-keeper with whom the same are so impounded shall detain the same in the like manner, and subject to the like regulations as to the care and disposal thereof, as in the case of cattle impounded for trespass on private property." (*Ib.* s. 148.)

CROSSINGS TO BE FENCED.—"At any road and farm-crossing on the grade of the railways in this province, the crossing shall

be sufficiently fenced on both sides of such points, so as to allow the safe passing of the trains."* (*Ib.* s. 150.)

DAMAGING RAILWAY. — "If any person wilfully and maliciously removes or displace any railway switch or rail of any railroad, or breaks, injures, or destroys any track or bridge, with intent thereby to injure person or property, or to endanger human life, such person shall be guilty of a misdemeanor punishable by imprisonment with hard labour, for a term not exceeding twelve months. If in consequence of such act with intent as aforesaid, any person actually suffers bodily harm, such injury shall be an aggravation of the offence, rendering it a felony, subject to imprisonment for two years." (*Ib.* s. 152.)

IF ANY PERSON BE KILLED, OFFENCE TO BE MANSLAUGHTER.— "If any person displaces or moves any switch, breaks down, rips up or destroys any tract, bridge or fence, or any portion thereof, whereby any engine, machine or structure or anything appertaining thereto is stopped, obstructed weakened or destroyed, with intent to injure any person or property, and if in consequence thereof any person be killed, the person so offending shall be guilty of manslaughter, and be imprisoned in the penitentiary for not more than ten nor less than four years." (*Ib.* s. 153.)

COMMITTING INJURY, STOPPAGE, &C.—If any person wilfully and maliciously does, or causes to be done, any act whatever whereby any property of any railroad, any structure, or any engine is impaired or obstructed in any way, the person so offending shall be guilty of a misdemeanor, and be punished on conviction thereof by imprisonment with hard labour in the common gaol of the territorial division where the act has been committed, for a period not exceeding one year. (See *ib.* s. 154.)

OBSTRUCTING INSPECTORS.—Every person wilfully obstructing any railway inspector in the execution of his duty shall, on conviction thereof before any Justice having jurisdiction in

* The penalties incurred under these sections may be recovered by the Attorney General in any court of competent jurisdiction, and shall be paid to the Receiver General to the credit of the railway inspection fund. (See s. 193.)

the place where the offence was committed, forfeit and pay a sum not exceeding forty dollars, and in default of payment thereof at such time as directed, the same or any other Justice having jurisdiction where the offender resides, may commit the offender for a period not exceeding three months; such commitment shall be determined on payment of the penalty, and every such penalty shall be returned to the next Quarter Sessions in the usual manner. (See *ib.* s. 155.)

OFFICERS, &C., CONTRAVENING BY-LAWS.—If any employee of any railway company wilfully or negligently contravenes any by-law or regulation lawfully made and in force, or any order or notice of the board of railway commissioners, of which a copy has been delivered to him or posted up, or open to inspection in a place where any of his duties are to be performed; then, if such contravention causes injury or increased risk to person or property, though no actual injury occurs, such contravention shall be a misdemeanor, and the person convicted thereof shall, in the discretion of the court, and in proportion to the greatness of the risk of injury, be punished by fine or imprisonment, or both, the fine not to exceed four hundred dollars, and the imprisonment not more than five years; and in case the imprisonment be two years or more, to be in the provincial penitentiary. (See *ib.* s. 156.)

If such contravention does not cause injury to person or property, or increase the risk of injury to person or property, then the employee guilty thereof shall incur a penalty not exceeding thirty days' pay nor less than fifteen days' pay, according to the direction of the convicting Justice; and such penalty may be recovered with costs before any Justice having jurisdiction where the offence was committed, or where the offender is found, on the oath of one credible witness other than the informer. (See *ib.* s. 159.)

COMPANY MAY IMPOSE.—"Any railway company may, by a by-law, impose on any officer, servant or person who before the contravention of the by-law has notice thereof and is employed by the company, a forfeiture to the company of not

less than thirty days' pay of such officer or servant for any contravention of such by-law, and may retain such forfeiture out of the salary or wages of the offender." (*Ib.* s. 162.)

Notice, how proved.—"The notice of the by-law, or of any order or notice of the board of railway commissioners, may be proved by proving the delivery of a copy thereof to the officer, servant or person, or that he signed a copy thereof, or that a copy thereof was posted in some place where his work or his duties, or some of them, were to be performed." (*Ib.* s. 163.)

Application of Penalties—"One moiety of such penalty shall belong to her Majesty for the public uses of this province, and the other moiety to the informer, unless he be an officer or servant of or person in the employ of the company, in which case he shall be a competent witness, and the whole penalty shall belong to her Majesty for the uses aforesaid." (*Ib.* s. 160.)

Company may deduct from Wages, &c.—"The company may in all cases under this act pay the amount of the penalty and costs, and recover the same from the offender, or deduct it from his salary or pay." (*Ib.* s. 161.)

REMAND.

See Con. Stat. C. c. 102, s. 42 (*ante*, p. 421).

RESCUE.

NATURE OF OFFENCE.—The offence of rescue nearly resembles that of prison breach, treated of *ante*, page 421.

When the party rescued is imprisoned on a charge of misdemeanor, the offence is a misdemeanor; and when he is imprisoned on a charge of felony the offence is felony.

PROOF OF CUSTODY OF THE PARTY RESCUED.—To make the offence of rescuing a party felony, it must appear that he was in custody for felony or suspicion of felony, but it is immaterial whether he was in custody of a private person or of an officer, or under a warrant of a Justice of the Peace, for when the arrest of a felon is lawful, the rescue of him is felony. But

it seems necessary that the party rescuing should have knowledge that the other is under arrest for felony if he be in custody of a private person, though if he be in the custody of a constable he is bound to take notice of it. (1 Hale P. C. 606.)

RESCUING PERSONS CONVICTED OF MURDER. (See *ante*, p. 389.)

RESPONSIBILITY FOR CRIME.

Certain persons, from age, natural imbecility, or want of freedom of will, are deemed incapable of committing crimes, and are exempt by law from criminal responsibility.

INFANTS.—An infant under the age of seven years cannot be guilty of felony; above the age of seven, if it appear that he has capacity to discern between good and evil, he is capable of guilt according to his discernment. But the presumption continues in favour of his innocence till he attain the age of fourteen, at which period he is, as to the commission of crimes, supposed to have attained discretion, and his actions are subject to the same responsibility as the rest of society. No infant under fourteen, however, can be guilty of rape.

WOMEN.—If a woman commit theft, burglary, or robbery, by the coercion of her husband, or even in his company, which presumes coercion, she is not guilty of these crimes; but such exceptions do not extend to treason, murder, or manslaughter.

IGNORANCE, &C.—Persons committing crimes by casualty or misfortune, by ignorance or mistake of facts (not of law), by compulsion or necessity, are not punishable; but each of these circumstances,—ignorance, necessity, or infirmity,—must be strictly and satisfactorily made out by the party who relies on them for justification.

IDIOTS AND LUNATICS.—Idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities, not even for treason itself. But he who is guilty of a crime through voluntary drunkenness may be punished for it as much as if he had been sober; and he who causes a madman to commit a crime is a principal offender, and so liable as if he had committed it himself.

RETURNS OF CONVICTIONS.

RETURN TO THE QUARTER SESSIONS.—"Every Justice of the Peace before whom any trial or hearing is had under any law giving jurisdiction in the premises, and who convicts and imposes any fine, forfeiture, penalty or damages upon the defendant, shall make a return thereof in writing under his hand to the next ensuing Quarter Sessions of the Peace for the county in which the conviction takes place, and of the receipt and application by him of the moneys received from the defendant; and in case the conviction takes place before two or more Justices, such Justices being present and joining in such conviction shall make an immediate return thereof as nearly as circumstances permit, as set forth in the following

FORM.

RETURN of convictions made by me (*or* us, *as the case may be*) in the month of ——, 18—.

Name of the Prosecutor.	Name of the Defendant.	Nature of the charge.	Date of Conviction.	Name of convicting Justice.	Amount of penalty, fine or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid why not, and general observations if any.

A. B., convicting Justice,
Or, A. B. and C. D., convicting Justices
(*as the case may be*).

And the Justices to whom any such moneys may be afterwards paid shall make a return of the receipts and application thereof to the next General Quarter Sessions, which return shall be

filed by the clerk of the peace with the records of his office."* (Con. Stat. U. C. c. 124, s. 1.)

PENALTY FOR NOT MAKING RETURNS.—"In case the Justice or Justices before whom any such conviction takes place, or who receive any such moneys, neglect or refuse to make such return thereof, or in case any such Justices wilfully make a false, partial or incorrect return, or wilfully receive a larger amount of fees than by law authorized to be received, in every such case such Justice or Justices, and each and every of them so neglecting or refusing, or wilfully making such false, partial or incorrect return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by any person who sues for the same by action of debt or information in any court of record in Upper Canada, one moiety whereof shall be paid to the party suing and the other moiety into the hands of her Majesty's Receiver General to and for the public uses of the province." (*Ib.* s. 2.)

LIMITATION.—"All prosecutions for penalties arising under the provisions of this act must be commenced within six months next after the cause of action accrues, and the same shall be tried in the county wherein such penalties have been incurred, and if a verdict passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant hath by law in other cases." (*Ib.* s. 3.)

THIS ACT NOT TO DISPENSE WITH OTHER NECESSARY RETURNS, OR TO DEPRIVE PERSONS AGGRIEVED OF THE RIGHT TO PROSECUTE A JUSTICE OF THE PEACE LIABLE TO BE INDICTED FOR ANY OFFENCE.—"Nothing herein contained shall exonerate Justices

* Many magistrates suppose that when this schedule is filled up and returned to the clerk of the peace, and the fine paid to the proper person, they have fulfilled their duty. Such, however, is not the case, for they are required by Con. Stat. C. c. 103, s. 42 (see *ante*, p. 86), to make out a formal conviction, and transmit the same to the office of the Clerk of the Peace.

of the Peace from duly returning to the General Quarter Sessions of the Peace of their respective counties any convictions, or records of convictions, which are by law required to be so returned, or to prevent any person aggrieved from prosecuting by indictment a Justice of the Peace for any offence, the commission of which would subject him to indictment at the time of the passing of this act." (*Ib.* s. 6.)

RIOTS, ROUTS AND UNLAWFUL ASSEMBLIES.

A Riot *punishable at common law* is defined by Hawkins to be a tumultuous disturbance of the peace by three persons or more assembling together of their own authority, with an intent to assist one another against any one who may oppose them in the execution of some enterprise of a private nature, and afterwards actually excuting the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. (Hawk. P. C. b. 1, c. 65, s. 1.)

A Rout.—A rout seems to be, according to the general opinion, a disturbance of the peace, by persons assembled together with an intention to do a thing which, if executed, would make them rioters, and actually making a motion towards the execution thereof. (Hawk. P. C. 1, c. 65, s. 1.)

An Unlawful Assembly.—Any meeting whatever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the king's subjects, seems properly to be called an unlawful assembly, as where great numbers complaining of a common grievance meet together armed in a warlike manner, in order to consult respecting the most proper means for recovery of their interests, for no one can foresee what may be the event of such an assembly. (Hawk. P. C. b. 1, c. 65, s. 9.)

The statutes of Canada upon this subject are the following: "In case any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to

the disturbance of the public peace, be by proclamation in the Queen's name, made in the form in this act, directed by any one or more Justice or Justices of the Peace, or by the sheriff of the county, or his deputy sheriff, or by the mayor or other head officer, or Justice of the Peace for any city or town corporate, where such persons are so assembled, required or commanded to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, and in case such persons to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request so made by proclamation, is felony, and the offenders shall suffer death." (Con. Stat. U. C. c. 97, s. 6.)

FORM OF PROCLAMATION.—"The order and form of proclamation to be made by the authority of this act shall be as follows, that is to say: The Justice of the Peace, or other person authorized to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be while proclamation is making; and after that, shall openly and with a loud voice make, or cause to be made, proclamation in these words, or to the like effect: 'Our sovereign lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the act relating to high treason, to tumults and riotous assemblies and to other offences. God save the Queen.'"* (*Ib.* s. 7.)

JUSTICES OF THE PEACE, &C., TO REPAIR TO PLACE OF RIOT AND MAKE PROCLAMATION.—"Every such Justice and Justices of the Peace, sheriff, deputy sheriff, mayor and other head officer,

* The Justice or other officer called upon to read the riot act should be careful, and correctly and distinctly make or cause to be made proclamation in the words given in the statute. In the case of R. v. Child, 4 C. & P. 442, it was decided that when the words "God save the King" were omitted in the reading of the proclamation, the parties combining together did not incur the penalties of the statute.

The officer who reads the proclamation should at once, upon concluding it, look at his watch and make a note in writing of the time.

within the limits of their respective jurisdictions, shall, on notice or knowledge of any such unlawful, riotous and tumultuous assembly of persons, to the number of twelve or more, resort to the place where such unlawful, riotous and tumultuous assembly is, and there make, or cause to be made, proclamation in manner aforesaid." (*Ib.* s. 8.)

NOT DISPERSING ON PROCLAMATION.—"If twelve or more of the persons so unlawfully, riotously and tumultuously assembled continue together, after proclamation made in manner aforesaid, and do not disperse themselves within one hour, then every Justice of the Peace, sheriff and deputy sheriff of the county where such assembly may be, and also every high and petty constable and other peace officer within such county, and also every mayor, Justice of the Peace, sheriff and other head officer, high or petty constable and other peace officer of any city or town corporate where such assembly may be, and any person or persons commanded to assist such Justice of the Peace, sheriff or deputy sheriff, mayor, bailiff, or other head officer aforesaid, (who may command all her Majesty's subjects of age and ability to be assisting them therein,) shall seize and apprehend the persons so unlawfully, riotously and tumultuously continuing together, after proclamation made as aforesaid, and shall forthwith carry the persons so apprehended before one or more of Her Majesty's Justices of the Peace of the county or place where such persons are so apprehended, in order to their being proceeded against for such their offences according to law."* (*Ib.* s. 9.)

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* The Justice or other officer acting under the authority of this section should not hesitate to call upon all the discreet and resolute persons present to be assisting.

It is not necessary, but is advisable, that the persons so called upon should be sworn in as special constables. They should be sent among the rioters to endeavor to persuade them to disperse. They should explain to the persons appearing to be the leaders of the riot the consequences which may follow if they continue together for the space of an hour after said reading. The Justice or other officer should, during the hour to elapse after proclamation and before arrests can be made, by all mild means within his power, endeavor to persuade the rioters to disperse.

He should read sections 6 to 11 of the riot act, and let the rioters understand the consequences which may follow if they refuse to disperse.

The second or subsequent reading of the act does not do away with the effect

If there is a military or volunteer force convenient it may be called out under the following act, and the mayors, wardens or Justices should not hesitate to do so.

VOLUNTEERS MAY BE CALLED OUT. — "The volunteers shall be liable to be called out in aid of the ordinary civil power in case of riot or other emergency requiring such services, and shall, when so employed, receive from the municipality in which their services are required the following rates of pay, that is to say: officers, such pay as is the daily pay in her Majesty's service of officers of corresponding rank, with an additional sum to each mounted officer of two dollars per day, and non-commissioned officers and privates the sum of one dollar each per day, with an additional sum of one dollar per day for each horse actually and necessarily used or employed on such occasion, and shall be also provided with proper lodging by such municipality; and the said sums, and the value of such lodging if not furnished by the municipality, may be recovered from it by the officer commanding the corps, in his own name, and when received or recovered shall be paid over to the officers and men entitled thereto." (27 Vic. c. 3, s. 18.)

HOW VOLUNTEERS CALLED OUT.—"It shall be the duty of the officer commanding any corps of volunteers to call out the same, or such portion thereof as is necessary, for the purpose of quelling any riot, when thereunto required in writing by the mayor, warden or other head of the municipality in which such riot takes place, or by any two magistrates therein, and to obey such instructions as may be lawfully given him by any magistrate in regard to the mode of quelling such riot; and every officer, non-commissioned officer and man of such corps shall, on every such occasion, obey the orders of his commanding officer; and the officers and men when so called out shall,

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of the first reading, and the hour is to be computed from the time of the first reading. R. v. Woodcock, 5 C. & P. 517.

The peace officers and others acting with and assisting the Justice, should ascertain as to who are, and be able to identify, the leaders, and observe their conduct during the hour.

At the expiration of the hour, if the Justice has what he deems a sufficient force, or all the force at his command, he should order the arrest of the leaders, and see that his orders are obeyed.

without any further or other appointment, and without taking any oath of office, be special constables, and shall act as such so long as they remain so called out." (*Ib.* s. 19.)

SUPPRESSING RIOT—DEATH OF RIOTER.—"If in the dispersing, seizing or apprehending, or endeavoring to disperse, seize or apprehend any of the persons so unlawfully, riotously and tumultuously assembled, any such person happen to be killed, maimed or hurt by reason of their resisting the persons dispersing, seizing or apprehending, or endeavoring to disperse, seize or apprehend them, then every such Justice of the Peace, sheriff, deputy sheriff, mayor, head officer, high or petty constable or other peace officer, and all persons who were aiding and assisting them, or any of them, shall be free, discharged and indemnified, as well against the Queen's Majesty as against all and every other person and persons of or concerning the killing, maiming or hurting of any such person or persons so unlawfully, riotously and tumultuously assembled as aforesaid." (Con. Stat. U. C. c. 97, s. 10.)

OPPOSING PEACE OFFICER AND OTHERS SUPPRESSING RIOTS.—"If any person or persons with force and arms wilfully and knowingly oppose, obstruct, or in any manner let, hinder or hurt any person or persons who begin to proclaim, or go to proclaim, according to the proclamation hereby directed to be made, whereby such proclamation cannot be made, then every such opposing, obstructing, letting, hindering or hurting such person or persons so beginning or going to make such proclamation as aforesaid, is felony, and the offenders shall suffer death; and every such person or persons so unlawfully, riotously and tumultuously assembled, to the number of twelve or more, as aforesaid, to whom proclamation should or ought to have been made, if the same had not been hindered as aforesaid, who, to the number of twelve or more, continue together and do not disperse themselves within one hour after such let or hindrance so made, having knowledge thereof, are guilty of felony, and shall suffer death." (*Ib.* s. 11.)

LIMITATION.—"No person or persons shall be prosecuted by virtue of this act for any offence or offences committed

contrary to the last six sections, unless such prosecution be commenced within twelve months after the offence committed." (*Ib.* s. 12.)

RIOTS NEAR PUBLIC WORKS.—*When and where this Act to be in force.*—"The governor in council may, as often as occasion requires, declare by proclamation the several places in this province within the limits whereof any canal or other public provincial work, or any railway, canal, or other work undertaken or carried on by any incorporated company under authority of any act of parliament, is in progress of construction, or such places as are in the vicinity of any such canal or railway or other work as aforesaid, within which he deems it necessary that this act should be in force; and this act shall, upon and after the day to be named in any such proclamation, take effect within the places designated in such proclamation.

2. "And the Governor in council may in like manner, from time to time, declare this act to be no longer in force in any of such places; but this shall not prevent the Governor in council from again declaring the same to be in force in any such place or places.

3. "But no proclamation shall have effect within the limits of any city." (Con. Stat. C. c. 29, s. 1.)

POSSESSING ARMS OR WEAPONS.—"Upon and after the day to be fixed in such proclamation, no person employed in or upon any such canal, railway, or other work as aforesaid, within the limits specified in such proclamation, shall keep or have in his possession or under his care or control, within the limits specified in such proclamation, any gun, blunderbuss, pistol, or other fire-arm, or any stock, lock, barrel, or other part of such gun, blunderbuss, pistol, or other fire-arm; or any bullets, sword-blade, bayonet, pike, pikehead, spear, spear-head, dirk, dagger, or other instrument intended for cutting or stabbing; or other arms, ammunition, or weapon of war, under a penalty of not less than two dollars nor more than four dollars for every such weapon found in his possession." (*Ib.* s. 2.)

DELIVERY OF WEAPONS.—"Within the time appointed as aforesaid in such proclamation, every person employed in or upon the canal, railway, or other work to which the same relates, shall bring and deliver up to some Justice of the Peace or commissioner, to be appointed by the Governor for the purposes of this act, every such weapon in his possession, and shall obtain from such Justice of the Peace or commissioner a receipt for the same." (*Ib.* s. 3.)

RESTITUTION OF WEAPONS DETAINED.—"When this act ceases to be in force within the place where any weapon has been delivered and detained in pursuance thereof, or when the owner or person lawfully entitled to any such weapon satisfies the magistrate or commissioner that he is about to remove immediately from the limits within which this act is at the time in force, the magistrate or commissioner may deliver up to the owner or person authorized to receive the same any such weapon, on production of the receipt so given for it." (*Ib.* s. 4.)

SEIZURE OF WEAPONS.—"Every such weapon found in the possession of any person employed as aforesaid after the day named in any proclamation as that on or before which such weapon ought to be delivered up, and within the limits or locality set forth in the proclamation bringing this act into force, shall be liable to be seized; and being seized by any Justice, commissioner, constable, or other peace-office, shall be forfeited to the use of her Majesty." (*Ib.* s. 5.)

PENALTY.—"If any person, for the purpose of defeating this law, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed, within the limits within which this act is at the time in force, any such weapon as aforesaid, belonging to, or in the custody of any person employed in any such canal, railway, or other work, such person shall forfeit a sum of not less than forty dollars, nor more than one hundred dollars; one-half to belong to the informer, and the other half to Her Majesty." (*Ib.* s. 6.)

ARREST OF PERSONS CARRYING WEAPONS.—"Any Justice or commissioner, constable or peace officer, or any person acting under a Justice's or commissioner's warrant, or in aid of any Justice, commissioner, constable or peace officer, may arrest and detain any person employed on any such canal, railway, or other work, found carrying any such weapon as aforesaid, within the limits or locality within which this act is at the time in force, at such time and in such manner as in the judgment of such Justice, commissioner, constable, or peace officer, or person acting under a warrant, affords just cause of suspicion that they are carried for purposes dangerous to the public peace; and the act of so carrying any such weapon by any person so employed, shall be a misdemeanor, and the Justice or commissioner arresting such person, or before whom he is brought under such warrant, may commit him for trial for a misdemeanor, unless he gives sufficient bail for his appearance at the next assizes or General Quarter Sessions of the peace, to answer to any indictment to be then preferred against him." (*Ib.* s. 8.)

RIVERS AND STREAMS—OFFENCES RELATING TO.

FLOATING TIMBER.—"Except in the case of round or squared timber, or of trees, masts, staves, deals, boards or other sawed or manufactured lumber or saw logs, prepared for transportation to a market, every person and every employer of such person, who cuts and fells any trees in the Grand river, the river Thames, river Nith, Speed, Otter creek, the river Credit, the river Otonabee from Sturgeon lake to Rice lake; the river Scugog, the river Trent from Rice lake to the Bay of Quinte, Crow river; the river Gananoque, Rideau, Petite Nation, Tay, Mississippi, Bonnechere, Madawaska, and Goodwood in Upper Canada, or upon such parts of the banks thereof as are usually overflowed in the autumn or spring of the year by the rising of the water in the said rivers or creeks, and who does not lop off the branches of said trees and cut up the trunks thereof into lengths of not more than eighteen feet, before they are allowed to be floated or cast into the said rivers or streams,

shall for every such offence forfeit and pay a penalty not exceeding ten dollars." (Con. Stat. U. C. c. 47, s. 1.)

OBSTRUCTING RIVERS.—"In case any person throws, or in case any owner or occupier of a mill suffers or permits to be thrown into any river, rivulet or water-course in Upper Canada, excepting those hereinafter mentioned, any slabs, bark, waste stuff or other refuse of any saw-mill (except saw-dust), or any stumps, roots, shrubs, tanbark, waste wood or bleached ashes; or in case any person fells, or causes to be felled, in or across such river, rivulet or water-course, any timber, or growing or standing trees, and allow the same to remain in or across such river, rivulet or water-course, he shall incur a penalty not exceeding twenty dollars, nor less than twenty cents for each day during which such obstruction remains in, over or across such river, rivulet or water-course, over and above all damage arising therefrom." (*Ib.* s. 2.)

ACT NOT TO EXTEND TO DAMS, &C., USED AS BRIDGES.—"This act shall not apply to any dam, weir or bridge erected in or over any such river, rivulet or water-course, or to anything done *bona fide* in or for erecting the same, or to any tree cut down or felled across any such river, rivulet or water-course, for the purpose of being used as a bridge from one side thereof to the other, provided such tree does not impede the flow of water or passing of rafts." (*Ib.* s. 3.)

RIVERS WHERE SALMON, &C., DO NOT ABOUND NOT INCLUDED.—"This act shall not extend to the river St. Lawrence, nor to the river Ottawa, nor to any river or rivulet wherein salmon, pickerel, black bass or perch do not abound." (*Ib.* s. 4.)

AS TO OBSTRUCTIONS NOT WILFUL.—"No such obstruction happening without the wilful default of any party, or in the *bonâ fide* exercise of his rights, shall subject him to any fine or forfeiture, unless upon default to remove the obstruction after notice and reasonable time afforded for that purpose." (*Ib.* s. 5.)

HOW FINES TO BE RECOVERED.—"All fines, penalties, forfeitures and damages under this act, when not together exceeding twenty dollars, may respectively, upon the oath of one credible

witness, be recovered with costs in a summary way in the manner provided by the act of the province of Canada relative to malicious injuries to property,* before any one or more of the Justices of the Peace for the county in which the offence has been committed, and unless the conviction be appealed from, if the fine, or penalty and damages (*as the case may be*), together with the costs, be not paid at the time stated in the conviction, the convicting Justice or Justices, or one of them when more than one, shall issue his or their warrant of distress to levy the same out of the goods and chattels of the offender; and in case there be not sufficient goods and chattels found to satisfy the same, and in case the offender does not otherwise satisfy the amount within three days after conviction, then such Justice or Justices (*as the case may be*) shall, by warrant under hand and seal, commit the offender to the common gaol of the county in which he has been convicted for the term of ten days, in case the conviction be under the first section of this act, or thirty days in case the conviction be under the second section of this act, unless the fine, penalty, or forfeiture and damages (*as the case may be*) and costs be sooner paid." (*Ib.* s. 6.)

By-laws against obstructions to Steamers, &c.—"Every township council may also make by-laws for preventing the obstruction of streams, creeks and water-courses by trees, brushwood, timber or other materials, and for clearing away and removing such obstructions at the expense of the offenders or otherwise, and for levying the amount of such expense in the same manner as taxes are levied, and for imposing penalties on parties causing such obstructions." (*Ib.* c. 54, s. 277.)

ROBBERY.

Robbery, as defined by legal writers, consists in the felonious and forcible taking from the person of another, or in his presence against his will, of any property, to any value, by violence or putting him in fear.

* Reference should have been made to the act respecting the duties of Justices of the Peace out of sessions in relation to summary convictions and orders, which virtually superseded 4 & 5 Vic. c. 26, s, 30.

WHEN CAPITAL.—"Any person who robs any other person, and at the time of or immediately before or immediately after such robbery, stabs, cuts, or wounds any person, shall be guilty of felony, and shall suffer death." (Con. Stat. C. c. 92, s. 1.)

WHEN NOT CAPITAL.—"Any person who robs any other person, or steals any chattel, money, or valuable security from the person of another, shall be imprisoned in the penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 2.)

ASSAULT WITH INTENT.—"Any person who assaults any other person with intent to rob shall be guilty of felony, and (except in cases where a greater punishment is provided by this act) shall be imprisoned in the penitentiary for any term not exceeding three years nor less than two years, or be imprisoned in the penitentiary for any term not exceeding three years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 3.)

FORCIBLY TAKING MONEY.—"Any person who, with menaces or by force, demands any chattel, money, or valuable security of any other person, with intent to steal the same, shall be guilty of felony, and shall be imprisoned in the penitentiary for any term not exceeding three years, or in any other prison or place of confinement for any term less than two years." (*Ib.* s. 4.)

ROBBERY AND ASSAULT.—"Any person who, being armed with any offensive weapon or instrument, robs or assaults with intent to rob any person, or together with one or more person or persons robs or assaults with intent to rob any person, or robs any person, and at the time of or immediately before or immediately after such robbery beats, strikes, or uses any other personal violence to any person, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 5.)

SCHOOLS—OFFENCES RELATING TO.

CHALLENGING VOTERS.—"If any person offering to vote at an annual or other section meeting is challenged as unqualified by any legal voter in such section, the chairman presiding at such meeting shall require the person so offering to make the following declaration:

"I do declare and affirm that I am a freeholder (*or* householder) in this school section, and that I am legally qualified to vote at this meeting."

"And every person making such declaration shall be permitted to vote on all questions proposed at such meeting; but if any person refuse to make such declaration his vote, shall be rejected." (Con. Stat. U. C. c. 64, s. 17.)

PENALTY FOR FALSE DECLARATION.—"If any person wilfully makes a false declaration of his right to vote he shall be guilty of a misdemeanor, and be punished by fine or imprisonment at the discretion of the court of Quarter Sessions, or by a penalty of not less than five dollars or more than ten dollars, to be sued for and recovered with costs before a Justice of the Peace by the trustees of the school section for its use. (*Ib.* s. 18.)

REFUSING TO SERVE AS TRUSTEE.—"If any person chosen as trustee refuses to serve, he shall forfeit the sum of five dollars; and every person so chosen who has not refused to accept the office, and who at any time refuses or neglects to perform its duties, shall forfeit and pay the sum of twenty dollars, to be sued for and recovered before a Justice of the Peace by the trustees of the school section for its use." (*Ib.* s. 23.)

PENALTY ON SECRETARY-TREASURER.—"If any secretary-treasurer appointed by the school trustees of any school section or any person having been such secretary-treasurer, has in his possession any books, papers, chattels or moneys, which came into his possession as such secretary-treasurer, and wrongfully withholds or refuses to deliver up, or to account for and pay over the same or any part thereof to the person, and in the manner directed by a majority of the school trustees for the school section then in office, such withholding or refusing shall be a misdemeanor." (Con. Stat. U. C. c. 64, s. 130.)

SUMMARY JURISDICTION.—"Upon application to the judge of the county court, by a majority of such trustees, supported by their affidavit made before some Justice of the Peace, of such wrongful withholding or refusal, such judge shall make an order that such secretary-treasurer, or person having been such, do appear before him at a time and place to be appointed in the order." (*Ib.* s. 131.)

ORDER, HOW TO BE SERVED.—"Any bailiff of a division court, upon being required by such judge, shall serve such order personally on the party complained against, or leave the same with a grown-up person at his residence." (*Ib.* s. 132.)

JUDGE TO HEAR CASE.—"At the time and place so appointed, the judge being satisfied that such service has been made, shall, in a summary manner, and whether the party complained of does or does not appear, hear the complaint; and if he is of opinion that the complaint is well founded, such judge shall order the party complained of to deliver up, account for and pay over the books, papers, chattels, or moneys as aforesaid, by a certain day to be named by the judge in the order, together with such reasonable costs incurred in making the application as the judge may tax." (*Ib.* s. 133.)

NON-COMPLIANCE WITH ORDER.—"In the event of a non-compliance with the terms specified in such order, or any or either of them, the judge shall order the said party to be forthwith arrested by the sheriff of any county in which he may be found, and to be committed to the common gaol of his county, there to remain without bail until such judge be satisfied that such party has delivered up, accounted for, or paid over the books, papers, chattels or moneys in question, in the manner directed by the majority of the trustees as aforesaid." (*Ib.* s. 134.)

DISCHARGES.—"Upon proof of his having so done, such judge shall make an order for his discharge, and he shall be discharged accordingly." (*Ib.* s. 135.)

OTHER REMEDY NOT AFFECTED.—"No such proceeding shall impair or affect any other remedy which the said trustees may have against such secretary-treasurer, or person having been such, or his sureties." (*Ib.* s. 136.)

PERSONAL RESPONSIBILITY.—"If any part of the common school fund be embezzled or lost through the dishonesty or faithlessness of any party to whom it has been entrusted, and proper security against such loss has not been taken, the person whose duty it was to have exacted such security shall be personally responsible for the sums so embezzled or lost, and the same may be recovered from him by the party entitled to receive the same by action at law in any court having jurisdiction to the amount, or by information at the suit of the crown." (*Ib.* s. 137.)

PENALTY FOR FALSE REPORTS AND REGISTERS.—"If any trustees of a common school knowingly signs a false report, or if any teacher of a common school keeps a false school register, or makes a false return, with the view of obtaining a larger sum than the just proportion of school moneys coming to such common school, such trustee or teacher shall for each offence forfeit to the common school fund of the township the sum of twenty dollars, for which any person whatever may prosecute him before a Justice of the Peace, and for which he may be convicted on the oath of one credible witness other than the prosecutor; and if upon conviction the penalty is not forthwith paid, the same shall, under the warrant of such Justice, be levied with costs by distress and sale of the goods and chattels of the offender; and such penalty when so paid or collected shall by such Justice be paid over to the said common school fund; or the said offender may be prosecuted for a misdemeanor. (*Ib.* s. 138.)

DISTURBERS OF SCHOOLS, HOW PUNISHED.—"Any person who wilfully disturbs, interrupts or disquiets the proceedings of any school meeting authorized to be held by this act, or any school established and conducted under its authority, or wilfully interrupts or disquiets any grammar, common or public school, by rude or indecent behavior, or by making a noise, either within the place where such school is kept or held or so near thereto as to disturb the order or exercises of such school, shall, for each offence on conviction thereof before a Justice of the Peace, on the oath of one credible witness, forfeit and pay for common

school purposes, to the school section, city, town or village within which the offence was committed, such sum not exceeding twenty dollars, together with the costs of the conviction, as the said Justice may think fit; or the offender may be indicted and punished for any of the offences hereinbefore mentioned as a misdemeanor." (*Ib.* s. 139.)

How Penalties shall be recoverable.—"Unless it is in this act otherwise provided, all fines, penalties and forfeitures recoverable by summary proceeding may be sued for, recovered and enforced with costs by and before any Justice of the Peace having jurisdiction within the school section, city, town or village in which such fine or penalty has been incurred, and if such fine or penalty and costs be not forthwith paid, the same shall, by and under the warrant of the convicting Justice, be enforced, levied and collected with costs, by distress and sale of the goods and chattels of the offender, and shall be by such Justice paid over to the school treasurer of the school section, city, town, or village, or other party entitled thereto; and in default of such distress, such Justice shall by his warrant cause the offender to be imprisoned for any time not exceeding thirty days, unless the fine and costs and the reasonable expenses of endeavoring to collect the same be sooner paid." (*Ib.* s. 140.)

Penalty on teacher refusing to deliver up School Register.—"Any teacher wilfully refusing, on demand of the majority of the trustees of the school corporation employing him, to deliver up any school register or school-house key, or other school property in his possession, shall be deemed guilty of a misdemeanor, and shall not be deemed a qualified teacher until restitution be made, and shall also forfeit any claim which he may have against the said trustees." (23 Vic., c. 49, s. 1.)

Section 17 Con. Stat. U. C. cap. 64 amended—Who may vote—Declaration may be required—Form, 23 Vic.—"The 17th section of the Upper Canada Common School Act, chapter 64 of the Con. Stat. for Upper Canada, shall be amended so as to read as follows: No person shall be entitled to vote in any school section for the election of trustee or on any school question whatsoever, unless he shall have been assessed and shall

have paid school rates as a freeholder or householder in such section; and in case an objection be made to the right of any person to vote in a school section, the chairman or presiding officer at the meeting shall, at the request of any ratepayer, require the person whose right of voting is objected to to make the following declaration:

'I do declare and affirm that I have been rated on the assessment roll of this school section as a freeholder (*or householder, as the case may be,*) and that I have paid a public school tax due by me in this school section, imposed within the last twelve months, and that I am legally qualified to vote at this meeting.'

"Whereupon the person making such declaration shall be permitted to vote on all questions proposed at such meeting; but if any person refuses to make such declaration, his vote shall be rejected; and if any person wilfully make a false declaration of his right to vote, he shall be guilty of a misdemeanor, and upon conviction, upon the complaint of any person, shall be punishable by fine or imprisonment in the manner provided for in the said Upper Canada Common School Act." (*Ib.* s. 3.)

PENALTY ON TRUSTEES REFUSING INFORMATION.—23 Vic. c. 49, s. 8, provides for the appointment of auditors of school accounts by the annual school meeting and trustees.

It declares the duties of school trustees and powers and duties of auditors, and that "If the trustees or their secretary in their behalf refuse to furnish the auditors, or either of them, with the papers or information in their power, and which may be required of them, relative to their school accounts, the party refusing shall be guilty of a misdemeanor, and, upon prosecution by either of the auditors or any ratepayer, be punished by fine or imprisonment, as provided by the one hundred and fortieth section of the said Upper Canada Common School Act."

NON-COMPLIANCE WITH AWARD.—"If the trustees wilfully refuse or neglect for one month after publication of award to comply with or give effect to an award of arbitrators appointed as provided by the eighty-fourth section of the said Upper Canada Common School Act, the trustees so refusing or

neglecting shall be held to be personally responsible for the amount of such award, which may be enforced against them individually by warrant of such arbitrators within one month after publication of their award; and no want of form shall invalidate the award or proceedings of arbitrators under the school act." (*Ib.* s. 9.)

DECLARATION AND FINE FOR NOT TAKING.—"Every person elected a trustee, and who is eligible and liable to serve as such, shall make the following declaration of office before the chairman of the school meeting: 'I will truly and faithfully, to the best of my judgment and ability, discharge the duties of the office of school trustee, to which I have been elected.' And if any person elected as school trustee shall not make such a declaration within two weeks after notice of his election, his neglect to do so shall be sufficient evidence of his refusing to serve and of his liability to pay the fine, as provided for in the twenty-third section of the said Upper Canada School Act." (*Ib.* s. 18.)

PENALTY ON CHAIRMAN FOR NEGLECT.—"Any chairman who neglects to transmit to the local superintendent a copy of the proceedings of an annual or other school section meeting over which he may preside, within ten days after the holding of such meeting, shall be liable, on the complaint of any ratepayer, to a fine of not more than five dollars, to be recovered as provided in the one hundred and fortieth section of the Upper Canada Common School Act aforesaid." (*Ib.* s. 19.)

SEARCH WARRANT.

"If any credible witness prove, upon oath before a Justice of the Peace, that there is reasonable cause to suspect that any property on or with respect to which any offence punishable either by indictment or summary conviction has been committed, is in any dwelling-house, out-house, garden, yard, or other place, the Justice may grant a warrant to search such dwelling-house, out-house, garden, yard, or place for such property, as in the case of stolen goods." (Con. Stat. C. c. 99, s. 2; see also *ib.* c. 102, s. 11, *ante* p. 81.)

SLANDER AND LIBEL.

EVIDENCE. — "On the trial of any action, indictment, or information for the making or publishing any libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue in such action, indictment, or information, and shall not be required or directed by the court or Judge before whom such action, indictment, or information is tried, to find the defendant guilty, merely on the proof of publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such action, indictment, or information; but the court or Judge before whom such trial is had, shall, according to the discretion of such court or Judge, give the opinion and directions of such court or Judge to the jury on the matter in issue, as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as he might have done before the passing of this act." (Con. Stat. U. C. c. 103, s. 1.)

AVERMENT.—"In actions of libel and slander, the plaintiff may aver that the words or matter complained of were used in a defamatory sense—specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient." (*Ib.* s. 2.)

APOLOGY.—"In any action for defamation, when the defendant has pleaded not guilty only, or has suffered judgment by default, or judgment has been given against him on demurrer, he may give in evidence in mitigation of damages that he made or offered a written or printed apology to the plaintiff for such defamation before the commencement of the action; or, in case the action was commenced before there was

an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity." (*Ib.* s. 3.)

MALICE.—"In an action for libel contained in any public newspaper or other periodical publication, the defendant may plead that such libel was inserted in such newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel; or, if the newspaper or periodical publication in which the said libel appeared be one ordinarily published at intervals exceeding one week, that he offered to publish such apology in any newspaper or periodical publication to be selected by the plaintiff in the action." (*Ib.* s. 4.)

AMENDS.—"Any defendant, upon filing such plea, may pay into court a sum of money by way of amends for the injury sustained by the publication of the libel, and such payment shall be of the same effect and available to the same extent and in the same manner, and be subject to the same rules and regulations as to costs and the form of pleading (except so far as regards the additional facts hereinbefore required to be pleaded by such defendant), as payment of money into court in other cases, and to such plea the plaintiff may reply generally, denying the whole of the plea." (*Ib.* s. 5.)

EXTORTION BY THREATS TO PUBLISH A LIBEL.—"Any person who publishes, or threatens to publish, any libel upon any other person; or directly or indirectly—

1. "Threatens to print or publish; or

2. "Proposes to abstain from printing or publishing; or

3. "Offers to prevent the printing or publishing of any matter or thing touching or concerning any other person, with intent to extort any money or security for money, or any valuable thing, from such or from any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, such offender

shall, on conviction, be fined in a sum not exceding four hundred dollars, and be imprisoned in the common gaol for any period less than two years." (*Ib.* s. 6.)

PUBLICATION OF FALSE LIBEL.—"Any person who maliciously publishes any defamatory libel, knowing the same to be false, shall, being convicted thereof, be fined not more than two hundred dollars, and be imprisoned in the common gaol for a period not exceeding one year." (*Ib.* s. 7.)

PUBLISHING ANY LIBEL.—"Any person who maliciously publishes any defamatory libel, shall, being convicted thereof, be fined not exceeding the sum of one hundred dollars, or be imprisoned not exceeding six months, or both, as the court may award." (*Ib.* s. 8.)

TRUTH AS A PLEA.—"To any indictment or information for a defamatory libel, it shall be a good defence for the defendant to plead the truth of the matters charged by way of justification, in the manner required in pleading a justification to an action for defamation, and that it was for the public benefit that such matters should be published, and to such plea the prosecutor may reply generally, denying the whole thereof." (*Ib.* s. 9.)

"Without such plea the truth of the matters charged as libellous in such indictment or informatian, or that it was for the public benefit that such matters should have been published, shall in no case be inquired into." (*Ib.* s. 10.)

"If after such plea the defendant be convicted on such indictment or information, the court, in pronouncing sentence, may consider whether the guilt of the defendant is aggravated or mitigated by such plea, and by the evidence given to prove or disprove the same." (*Ib.* s. 11.)

"In addition to such plea of justification, the defendant may plead not guilty, and no defence otherwise open to the defendant under the plea of not guilty shall be taken away or prejudiced by reason of such special plea." (*Ib.* s. 12.)

PUBLICATION WITHOUT AUTHORITY.—"Whenever upon the trial of any indictment or information for the publication of a libel,

to which the plea of not guilty has been pleaded, evidence is given which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, the defendant may prove (and if proved, it shall be a good defence), that such publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part." (*Ib.* s. 13.)

Costs.—"In the case of an indictment or information by a private prosecutor, for the publication of any defamatory libel, if judgment be given against the defendant he shall be liable for the costs sustained by the prosecutor by reason of such indictment or information; and if judgment be given for the defendant, he shall be entitled to recover from such prosecutor the costs sustained by the defendant by reason of such indictment or information." (*Ib.* s. 14.)

"The costs in such cases shall, at the option of the party in whose favour the same are to be taxed, be taxed by either of the clerks of the crown and pleas at Toronto, or by the deputy-clerk of the crown in the county where such trial took place." (*Ib.* s. 15.)

"Process of contempt and arrest for non-payment of costs having been abolished by the fourth and tenth sections of the act passed in the twenty second year of Her Majesty's reign, chapter thirty-three (A.D. 1859), to extend the provisions of the act for the abolition of imprisonment for debt, and as provided in the third and thirteenth sections of the Consolidated Statutes for Upper Canada, chapter twenty-four, respecting arrest and imprisonment for debt; therefore, the costs mentioned in the two last preceding sections of this act shall be recoverable on any rule or order of the court of Queen's Bench or Common Pleas, or of any Judge of either of the said superior courts of common law, or on the rule or order of the county court in the county in which such indictment or information was tried, or of any Judge of such county court, in the manner provided in the nineteenth section of the said Consolidated Statute, and subject to the other provisions of

the said Consolidated Statute so far as material and applicable; and such proceedings shall be had on any such rule or order as may, at the time this act takes effect, be had in any case for non-payment of costs, pursuant to an order or rule of either of the said superior courts, and all proceedings for the recovery of such costs shall be entitled in the court of oyer and terminer for the county in which such trial was had." (*Ib.* s. 16.)

SMUGGLING.

USING FALSE INVOICES.—"If any person knowingly and wilfully, with intent to defraud the revenue of this province, smuggles or clandestinely introduces into this province any goods subject to duty, without paying or accounting for the duty thereon, or makes out or passes or attempts to pass through the custom house any false, forged or fraudulent invoice, or in any way attempts to defraud the revenue by evading the payment of the duty, or of any part of the duty, on any goods, every such person, his, her and their aiders or abettors shall, in addition to any other penalty or forfeiture to which they may be subject for such offence, be deemed guilty of a misdemeanor, and on conviction shall be liable to a penalty not exceeding two hundred dollars or to imprisonment for a term not exceeding one year, or both, in the discretion of the court before whom the conviction is had." (Con. Stats. C. c. 17, s. 55.)

OFFERING FOR SALE GOODS PRETENDED TO BE SMUGGLED.—"If any person offers for sale any goods under pretence that the same are prohibited, or have been unshipped and run on shore or brought in, by land or otherwise, without payment of duties, then and in such case all such goods (although not liable to any duties nor prohibited) shall be forfeited, and every person offering the same for sale shall forfeit the treble value of such goods, or the penalty of two hundred dollars, at the election of the prosecutor, which penalty shall be recoverable in a summary way before any one or more Justices of the Peace; and in

default of payment on conviction, the party so offending shall be committed to any of Her Majesty's gaols for a period not exceeding sixty days." (*Ib.* s. 56.)

HARBOURING SMUGGLED GOODS.—"If any person knowingly harbors, keeps, conceals, purchases, sells or exchanges any goods illegally imported into this province, (whether such goods are dutiable or not,) or whereon the duties lawfully payable have not been paid, such person shall for such offence forfeit treble the value of the said goods, as well as the goods themselves." (*Ib.* s. 57.)

COMPANY OF PERSONS FOUND WITH SMUGGLED GOODS.—"If any five or more persons in company are found together, and they or any of them have any goods liable to forfeiture under this act, every such person shall be guilty of misdemeanor and punishable accordingly." (*Ib.* s. 58.)

HIRING PERSONS TO ASSIST IN SMUGGLING.—"Any person who by any means procures or hires any person or persons, or who deputes, authorizes or directs any person or persons to assemble for purpose of being concerned in the landing or unshipping or carrying or conveying any goods which are prohibited to be imported, or the duties for which had not been paid or secured, shall for every person so hired forfeit the sum of one hundred dollars." (*Ib.* s. 59.)

OFFENCES WITH REGARD TO WAREHOUSED GOODS, FRAUDULENTLY CONCEALING, &C.—1. "If any warehoused goods are fraudulently concealed in or removed from any public or private warehouse in this province, such goods shall be forfeited; and any person fraudulently concealing or removing such goods, or aiding or abetting such removal, shall incur the penalties imposed on persons illegally importing or smuggling goods into this province.

Fraudulently Opening Warehouse.—2. "And if the importer or owner of any warehoused goods, or any person in his employ, by any contrivance fraudulently opens the warehouse in which the goods are, or gains access to the goods except in the presence of, or with the express permission of the proper officer of

the customs acting in the execution of his duty, such importer or owner shall for every such offence forfeit the sum of one thousand dollars.

Altering Marks.—3. "And any person wilfully altering, defacing or obliterating any marks placed by the officer of the customs on any package of warehoused goods, shall for every such offence forfeit the sum of five hundred dollars." (*Ib.* s. 60.)

FORFEITURE OF VESSELS ASSISTING TO LAND SMUGGLED GOODS. —"All vessels, with the guns, tackle, apparel and furniture thereof, carriages, harness, tackle, horses and cattle used in the removal of any goods liable to forfeiture under this act, shall be forfeited; and every person assisting or otherwise concerned in the unshipping, landing or removal, or in the harbouring of such goods, or into whose hands or possession the same knowingly come, shall, besides the goods themselves, forfeit treble the value thereof, or the penalty of two hundred dollars, at the election of the officer of the customs or of the party suing for the same." (*Ib.* s. 61.)

VESSELS HOVERING.—"If any vessel is seen hovering (in British waters) within one league of the coasts or shores of this province, any officer of customs may go on board and enter into such vessel, and freely stay on board such vessel while she remain within the limits of this province; and if such vessel is bound elsewhere, and so continues hovering for the space of twenty-four hours after the master has been required to depart by such officer of the customs, such officer may bring the vessel into port, and examine her cargo, and if any goods prohibited to be imported into this province are found on board, then such vessel, with her apparel, rigging, tackle, stores and cargo, shall be forfeited; and if the master or person in charge refuses to comply with the lawful directions of such officer, or does not truly answer such questions as are put to him respecting such ship and vessel, or her cargo, he shall forfeit and pay the sum of four hundred dollars." (*Ib.* s. 62.)

SMUGGLED GOODS STOPPED ON SUSPICION.—"If any such goods are stopped or taken by such police officer on suspicion that the

same have been feloniously stolen, such officer shall carry the same to the police office to which the offender is taken, there to remain until and in order to be produced at the trial of the said offender; and in such case the officer shall give notice in writing to the collector or principal officer of Her Majesty's customs at the port nearest to the place where such goods have been detained of his having so detained the said goods, with the particulars of the same: and immediately after the trial all such goods shall be conveyed to and deposited in the custom house or other place appointed, as aforesaid, and proceedings relative to the same shall be had according to law." (*Ib.* s. 66.)

Police Officer neglecting to obey this Section.—"And in case any police officer having detained such goods neglects to convey the same to such warehouse, or to give such notice of having stopped the same as before described, such officer shall forfeit the sum of one hundred dollars; and such penalty shall be recoverable in a summary way before any one or more Justices of the Peace, and in default of payment the party so offending shall be committed to any of her Majesty's gaols for a period not exceeding thirty days." (*Ibid.*)

Forging Marks, &c.—"If any person at any time forges or counterfeits any mark or brand to resemble any mark or brand provided or used for the purposes of this act, or forges or counterfeits the impression of any such mark or brand, or sells or exposes to sale, or has in his custody or possession any goods with a counterfeit mark or brand, knowing the same to be counterfeit, or uses or affixes any such mark or brand to any other goods required to be stamped as aforesaid, other than those to which the same was originally affixed, such goods so falsely marked or branded shall be forfeited, and every such offender, and his aiders, abettors or assistants, shall, for every such offence forfeit and pay the sum of two hundred dollars; which penalty shall be recoverable in a summary way before any two Justices of the Peace in this province, and in default of payment the party so offending shall be committed to any of her Majesty's gaols in this province for a period not exceeding twelve months." (*Ib.* s. 67.)

COUNTERFEITING, OR USING COUNTERFEITED PAPERS.—"If any person counterfeits or falsifies, or uses when so counterfeited or falsified, any paper or document required under this act or for any purpose therein mentioned, whether written, printed, or otherwise, or by any false statement procure such document, or forges or counterfeits any certificate relating to any oath, affirmation or declaration hereby required or authorized, knowing the same to be so forged or counterfeited, such person shall be guilty of a misdemeanor, and being thereof convicted shall be liable to be punished accordingly." (*Ib.* s. 68.)

OFFICERS EMPLOYED FOR THE PREVENTION OF SMUGGLING.—"All officers and persons employed under the authority of any enactment in chapter sixteen of these Consolidated Statutes of Canada, or in the collection of the revenue within the meaning of that act, or under the direction of any officer or officers in the customs department, or being an officer of the said department, shall be deemed and taken to be duly employed for the prevention of smuggling; and in any suit or information the averment that such party was so duly employed shall be sufficient proof thereof, unless the defendant in such suit or information shall prove to the contrary.

"Every such officer or person as aforesaid, may upon information or upon reasonable ground of suspicion, detain, open, and examine any package suspected to contain prohibited property or smuggled goods, and may go on board and enter into any vessel, boat, canoe, carriage, waggon, cart, sleigh or other vehicle or means of conveyance of any description whatsoever, and may stop and detain the same, whether arriving from places beyond or within the limits of this province, and may rummage and search all parts thereof, for prohibited, forfeited, or smuggled goods: and if any such prohibited, forfeited, or smuggled goods are found in any such vessel or vehicle, the officer or person so employed may seize and secure such vessel or vehicle, together with all the sails, rigging, tackle, apparel, horses, harness and other appurtenances, which at the time of such seizure belong to or are attached to such vessel or vehicle, with all goods and other things laden therein or thereon, and the same shall be forfeited.

"The officer or person in the discharge of the said duty may call in such lawful aid and assistance in the Queen's name as may be necessary for securing and protecting such seized vessels, vehicles or property: And if no such prohibited, forfeited, or smuggled goods are found, such officer or person, having had reasonable cause to suspect that prohibited, forfeited or smuggled goods would be found therein, shall not be liable to any prosecution or action at law for any such search, detention or stoppage.

Refusing to Stop or Assist.—"All masters or persons in charge of any such vessels, and all drivers or persons conducting or having charge of such vehicles or conveyances, refusing to stop when required to do so by such officer or person as aforesaid in the Queen's name, and any person being present at any such seizure or stoppage, and being called upon in the Queen's name by such officer or person to aid and assist him in a lawful way, and refusing so to do, shall forfeit and pay the sum of two hundred dollars, which penalty shall be summarily recovered before any two Justices of the Peace in this province, and in default of payment the offender shall be committed to any of her Majesty's gaols in this province for a period not exceeding six months. (*Ib.* s. 70.)

Appeals.—"An appeal shall be from the conviction of any Justices of the Peace under this act to the Quarter Sessions, to be tried by a jury, in the same manner as from convictions in any case of summary punishment allowed by law, on furnishing security by bond or recognizance with two sureties to the satisfaction of such convicting Justices, to abide the event of such appeal." (*Ib.* s. 88.)

Felonies—*Removing goods seized.*—"If any person whatever, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away any goods, carriage, vessel or other thing which has been seized or detained on suspicion, as forfeited under this act, before the same has been declared by competent authority to have been seized without due cause, and without the permission of the officer or person having seized the same,

or of some competent authority, such person shall be deemed to have stolen such goods, being the property of her Majesty, and to be guilty of felony, and shall be liable to punishment accordingly." (*Ib.* s. 63.)

Assaulting, &c., Officers.—"If any person under any pretence, either by actual assault, force or violence, or by threats of such assault, force or violence, in any way resists, opposes, molests or obstructs any officer of customs, or any person acting in his aid or assistance, in the discharge of his or their duty under the authority of this act, or any other law of the province relating to customs, trade or navigation;

Firing at Vessels.—"Or wilfully or maliciously shoots at or attempts to destroy any vessel belonging to her Majesty or in the service of the province;

Wounding Officers, &c.—"Or maims or wounds any officer of the army, navy, marine or customs, or any person acting in his aid or assistance, while duly employed for the prevention of smuggling, and in execution of his or their duty;

Having smuggled Goods, &c., and being armed, &c.—"Or if any person is found with goods liable to seizure or forfeiture, under this act or any other law relating to customs, trade or navigation, and carrying offensive arms or weapons, or in any way disguised;

Destroying Vessels, Goods, &c.—"Or staves, breaks or in any way destroys any such goods before or after the actual seizure thereof; or scuttles, sinks or cuts adrift any vessel, or destroys or injures any vehicle before or after the seizure; or wilfully and maliciously destroys or injures by fire or otherwise any custom-house, or any building whatsoever in which seized or forfeited goods are deposited or kept—such person, being convicted thereof, shall be judged guilty of felony, and shall be punished accordingly." (*Ib.* s. 72.)

NOTE.—Fines and forfeitures under this act are not recoverable before a Justice unless where a special provision is made to that effect; but offences which are hereby made felonies and misdemeanors, of course come under the Justice's jurisdiction as indictable offences.

SHEEP—PROTECTION OF, IN UPPER CANADA.

Dogs worrying Sheep may be killed.—"It shall be lawful for any person to kill any dog in the act of pursuing or worrying or destroying sheep, elsewhere than on land belonging to the owner of such dog." (27 V. ch. 20, s. 1.)

Owners of Dogs may be summoned.—"On complaint made in writing on oath before any Justice of the Peace for any city, town or county, or union of counties in Upper Canada, that any person residing in such city, town or county, or union of counties, owns or has in his possession a dog which has within six months previous worried and injured or destroyed any sheep, such Justice of the Peace may issue his summons, directed to such person, stating shortly the matter of such complaint, and requiring such person to appear before him at a certain time and place therein stated, to answer to such complaint, and to be further dealt with according to law." (*Ib.* s. 2.)

Proceedings, how regulated.—"The proceedings on such complaint and summons shall be regulated by the act respecting the duties of Justices of the Peace out of sessions, in relation to summary convictions and orders, which shall apply to cases under this act." (*Ib.* s. 3.)

Justice may order that Dog be destroyed.—"In case any person is convicted on the oath of a credible witness, of owning or having in his possession a dog which has worried and injured or destroyed any sheep, the Justice of the Peace may make an order for the killing of such dog (describing the same according to the tenor of the description given in the complaint under the evidence) within three days, and in default thereof may, in his discretion, impose a fine upon such person not exceeding twenty dollars, with costs; and all penalties imposed under this act shall be applied to the use of the municipality in which the defendant resides." (*Ib.* s. 4.)

Conviction no bar.—No conviction under this act shall be a bar to any action by the owner or possessor, as aforesaid, of

any sheep, for the recovery of damages for the injury done to such sheep, in respect of which such conviction is had." (*Ib.* s. 5.)

NOT NECESSARY TO PROVE KNOWLEDGE OF PROPENSITY.—"It shall not be necessary for the plaintiff, in any action of damages for injury done by a dog to sheep, to prove that the defendant was aware of the propensity of the dog to pursue or injure sheep; nor shall the liability of the owner or possessor, as aforesaid, of any dog, in damages for any injury done by such dog to any sheep, depend upon his previous knowledge of the propensity of such dog to injure sheep." (*Ib.* s. 6.)

DEFENCE FOR KILLING A DOG.—"The defendant, in any action of damages for killing a dog under the first section of this act, may plead the general issue and give this act and the special matter in evidence: and by section eight the act is limited to Upper Canada." (*Ib.* s. 7.)

SPIRITUOUS LIQUORS.

It is proposed to quote—

1st. The law which applies only to the licensing of taverns and shops in cities;
2nd. The law applicable to places other than cities;
3rd. Those clauses respecting licenses which apply to all municipalities; and
4th. The act for the punishment of persons selling liquor without license.

IN CITIES.—"The commissioners of police in cities are empowered to grant certificates for tavern licenses for the retail of spirituous, fermented, or other manufactured liquors to be drunk in the inn, ale-house, beer-house, or other house, and to grant certificates for shop licenses." (25 Vic. c. 23, sec. 2, sub. sec. 1.)

Number and Accommodation.—"The board of commissioners of police in any city shall not grant certificates for tavern licenses in any year in a proportion greater than one for every two hundred and fifty souls resident in such city, as

shewn by the then last census or any subsequent special enumeration taken by order of the city council concerned; nor shall more than one in every twenty certificates of tavern licenses granted or issued in any city be granted or issued for any house or place unprovided with the following accommodations, that is to say: Four or more bedrooms, with the suitable complement of bedding and furniture for each, in addition to such bedrooms, bedding, and furniture as may be needed for the use of the family of the tavern-keeper." (*Ib.* s. 3.)

Penalty.—"Any officer or person who issues a license contrary to the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than forty dollars nor more than one hundred dollars, or may be imprisoned for a period not exceeding thirty days, or both, at the discretion of the court." (*Ib.* s. 7.)

MUNICIPALITIES NOT CITIES.—"The council of every township, town, or incorporated village, may pass by-laws—

1st. For granting tavern or shop licenses;

2nd. For declaring the terms and conditions required to be complied with by the applicant for license, and the security to be given by him for observing the same;

3rd. The declaring the security to be given by an applicant for a shop or tavern license for observing the by-laws of the municipality;

4th. For limiting the number of tavern or shop licenses respectively.*

5th. For regulating the houses or places licensed, the time the licenses are to be in force (not exceeding one year), and the sums to be paid therefor respectively. (Con. Stat. U. C. c. 54, s. 246.)

Condition precedent.—Municipality cannot issue licenses till at least thirty of the resident electors of the municipality, by petition, pray for the same. (23 Vic. c. 53, s. 1.)

Accommodation.—Every tavern shall contain, in addition to what may be needed for the family of the tavern-keeper,

* They cannot license more than one for every two hundred and fifty souls in the municipality, as shewn by the last census. (25 Vic. c. 53, s. 3.)

not less than four bedrooms, with suitable bedding and furniture, and shall have attached to it proper stabling for at least six horses. (*Ib.* s. 3.)

Exceptions.—In towns, the corporation may exempt three taverns from the necessity of having the accommodation required in last section. (*Ib.* s. 4.)

Penalty.—"Any officer of a municipality who issues a license contrary to the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall pay a fine of not less than forty dollars nor more than one hundred dollars, or may be imprisoned for a period not exceeding thirty days, or both." (*Ib.* s. 6.)

APPLICABLE TO ALL MUNICIPALITIES.—*No License required.*—"No tavern or shop license shall be necessary for selling any liquors in the original packages in which the same have been received from the importer or manufacturer, provided such packages respectively contain not less than five gallons or one dozen bottles." (*Ib.* s. 249.)

Notice of License.—"Every person who keeps a tavern or other house or place of public entertainment, and has a tavern license, shall exhibit over the door of such tavern, house, or place, in large letters, the words 'Licensed to sell wine, beer, and other spirituous or fermented liquors,' under a penalty in default of so doing of one dollar, recoverable with costs before any Justice of the Peace, upon the oath of one credible witness, one half of which penalty shall go to the informer and the other half to the municipality." (*Ib.* s. 251.)

Not to be consumed in Shop.—"Shop licenses not to authorize sale of liquors to be consumed upon the premises." (*Ib.* s. 252.)

Transfer of License.—"Any inspector of licenses may, in his discretion, endorse on any license permission to the person holding the license to sell liquors *mentioned in his license* at any place out of his house, or to remove from the house licensed to another house situate within the same municipality." (*Ib.* s. 260.)

DISORDERLY INNS.—"The mayor or police magistrate of a town or city, with any one Justice of the Peace, or the reeve of a township or village, with any one Justice of the Peace, upon complaint made on oath to them or one of them, of riotous or disorderly conduct in any inn, tavern, ale, or beer-house situate within their jurisdiction, may summon the keeper of the inn, tavern, ale, or beer-house to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or convict the keeper of having a riotous or disorderly house, and annul his license or suspend the same for not more than sixty days, with or without costs, as in their discretion may seem just." (*Ib.* s. 264.)

SPIRITUOUS LIQUORS—OFFENCES RELATING TO.

SALE OF, NEAR PUBLIC WORKS.—"No person shall barter, sell, or exchange or dispose of, directly or indirectly, to any other person, any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor a part of which is spirituous or vinous, fermented or otherwise intoxicating, —and every such liquor or mixed liquor shall be included in the expression 'intoxicating liquor,' when used in this act—nor shall expose, keep or have in his possession for sale, barter or exchange, any intoxicating liquor, at any place not included within the limits of any city, incorporated or other town or village, and being within three miles of the line of any railway, canal, or other public work in progress of construction, whether such work be constructed by the government of this province or by any incorporated company, or by private enterprise; nor shall any person obtain or receive a license to sell any intoxicating liquor at any such place as aforesaid, and any such license, if granted, shall be null." (Con. Stats. C. ch. 30, s. 1.)

GOVERNOR MAY DECLARE WORKS WITHIN THIS ACT.—"If any doubt at any time arise as to whether any work then in progress does or does not come within the meaning of this section, the governor, if he sees fit, may declare by proclamation that

such work is within the meaning of this section, and that the prohibition herein contained applies to any place within three miles of the line thereof, which line may be described and defined in such proclamation; and the declaration contained in such proclamation shall have the like force as if contained in this act, and the said prohibition shall apply accordingly." (*Ib.* s. 1, sub s. 1.)

PENALTY.—"Any person who, in contravention of this act, by himself, his clerk, servant or agent, exposes or keeps for sale, or barters or sells, disposes of, gives or exchanges for any other matter or thing, to any other person, any intoxicating liquor, shall be liable to a fine of twenty dollars on the first conviction, forty dollars on the second, and on the third and every subsequent conviction to such last-mentioned fine and imprisonment for a period not more than six months, such fine to be paid over to the chamberlain, treasurer, clerk, or secretary-treasurer of the municipality in which the offence is proved to have been committed, for the use of the municipality, and be applied to such public purposes as the council thereof may direct.

"And in default of payment of any fine and costs under this act, with the costs of prosecution, at the time of conviction, the offender shall be imprisoned until the same be paid, under warrant of the Justice, reeve, mayor, police magistrate, recorder or judge before whom the conviction is had; but no person shall be imprisoned for any offence under this act for fine or costs, or both for fine and costs, for a period exceeding six months." (*Ib.* s. 2.)

AGENTS.—"If any clerk, servant or agent, or other person in the employment or on the premises of another, sells, disposes of, or exchanges for any other matter or thing, or assists in selling, disposing of, exchanging for any other matter or thing any intoxicating liquor, in contravention of this act, for the person in whose service or on whose premises he is, he shall be held equally guilty with the principal, and shall suffer the like penalty." (*Ib.* s. 3.)

JURISDICTION.—"Any Justice of the Peace, any reeve or mayor of a township or municipality, any police magistrate, recorder of a city or town, any judge of a circuit or division court, shall hear and determine summarily any case arising within his jurisdiction under this act; and every person making a complaint against any other person for contravening this act, or any part or portion thereof, before such Justice, reeve, mayor, police magistrate, recorder or judge, may be admitted as a witness; and if such justice, mayor, reeve, police magistrate, recorder, judge or commissioner before whom the examination or trial is had so orders, as he may if he thinks there is probable cause for the prosecution, the defendant shall not recover costs though the prosecution fails." (*Ib.* s. 4.)

APPEAL.—"No appeal shall be allowed to any person complained of or convicted under this act, unless he enters into a recognizance or bond to the municipality in which the offence is alleged to have been committed in the sum of one hundred dollars, jointly and severally with two good and sufficient sureties, to prosecute his appeal, and to pay all costs, fines and penalties to be awarded against him upon the final determination of the case.

RECOGNIZANCE.—"No recognizance or bond shall be taken except by the Justice, reeve, or police magistrate, recorder or judge before whom the complaint was made, or the offender tried, and the security shall be to his satisfaction; and if the appeal is not successful, the recognizance or bond shall be forfeited, and the amount thereof become a debt due to the municipality within which the offence was committed, recoverable by action and in the name of the municipality. It shall be the duty of the secretary-treasurer, clerk, or treasurer, or chamberlain of such municipality to prosecute the same, and the money shall be applied in same manner as fines hereinbefore mentioned. If recognizance or bond mentioned in this section is not given within three days after conviction, &c., appeal not to be allowed." (*Ib.* s. 5.)

SEARCH.—"If any three persons being voters, or entitled to vote at any municipal election of the municipality within

which the complaint is made, make oath or affirmation before any Justice, reeve, mayor or police magistrate, recorder or judge of the circuit court, or of a division court, that they have reason to believe and do believe that any intoxicating liquor intended for sale or barter, in contravention of this act, is kept or deposited in any steamboat or other vessel, or in any carriage or vehicle, or in any store, shop, warehouse or other building or place in such municipality, or on any river, lake or water adjoining the same, at any place within which such intoxicating liquor is by this act prohibited to be sold or bartered, or kept for sale or barter, the said Justice, mayor, reeve or police magistrate, recorder or judge shall issue his warrant of search to any sheriff, police officer, bailiff or constable, who shall forthwith proceed to search the premises, steamboat, vessel, or place described in such warrant, and if any intoxicating liquor be found therein he shall seize the same, and the barrels, casks or other packages in which it is contained, and convey them to some proper place of security, and there keep them until final action is held thereon; but no dwelling-house in which or in part of which, a shop or bar is not kept shall be searched unless one at least of the said complainants shall testify on oath to some act of sale of intoxicating liquor therein or therefrom, in contravention of this act, within one month of the time of making the said complaint.

2. "The owner or keeper of the liquor seized as aforesaid, if he is known to the officer seizing the same, shall be summoned forthwith before the Justice or person by whose warrant the liquor was seized; and if he fails to appear, and it appears to the satisfaction of the Justice or person who issued the warrant that the said liquor was kept or intended for sale or barter in contravention of this act, it shall be declared forfeited, with any package in which it is contained, and shall be destroyed by the authority of the written order to that effect of the Justice, reeve, mayor, police magistrate, recorder or judge, and in his presence, or in the presence of some person appointed to witness the destruction thereof, and who shall join with the officer by whom the said liquor has been destroyed, in attesting that fact on the back of the order by

which it was done; and the owner or keeper of such liquor shall pay a fine of forty dollars and costs, or be committed to prison for three months in default thereof." (*Ib.* s. 6.)

"If the owner, keeper or possessor of liquor seized under the provisions of this act is unknown to the officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure has been advertised, with the number and description of the package as near as may be, for two weeks, by posting up a written or printed notice and description thereof in at least three public places.

2. "And if it is proved within such two weeks, to the satisfaction of the Justice, reeve, mayor, police magistrate, recorder or judge by whose authority such liquor was seized, that it was not intended for sale or barter in contravention of this act, it shall not be destroyed, but be delivered to the owner, who shall give his receipt therefor on the back of the warrant, which shall be returned to the Justice or person who issued the same; but if after such advertisement as aforesaid, it appears to such Justice, reeve, mayor, police magistrate, recorder or judge, that such liquor was intended for sale or barter in contravention of this act, then such liquor, with any package in which it is contained, shall be forfeited, condemned and destroyed." (*Ib.* s. 7.)

PAYMENTS VOID.—"Any payment or compensation for liquor sold or bartered in contravention of this act, whether in money or securities for money, shall be held to be against law, equity, and good conscience; and the amount or value thereof may be recovered from the receiver by the party making, paying or furnishing the same; and all sales, transfers, conveyances, liens and securities of every kind which, either in whole or in part have been given for or on account of intoxicating liquor sold or bartered in contravention of this act, shall be null against all persons, and no right shall be acquired thereby, and no action of any kind shall be maintained, either in whole or in part, for or on account of intoxicating liquor so sold or bartered in contravention of this act." (*Ib.* s. 8.)

COMPELLING ATTENDANCE OF WITNESSES. — Any Justice of the Peace, police magistrate, recorder or judge, &c., is autho-

rized to hear and determine offences against this act, and may summon any person as a material witness, who may be committed to prison if refusing to attend, be sworn, or to affirm. (See *ib.* s. 9.)

PROTECTION OF JUSTICES.—"All the provisions of any law for the protection of Justices of the Peace, when acting as such, &c., in matters relating to summary convictions and orders, so far as they are not inconsistent, apply to every functionary mentioned, and every functionary is deemed a Justice of the Peace within the meaning of the law, whether a Justice or not for other purposes." (*Ib.* s. 9.)

COSTS.—"Whenever judgment is rendered for costs, there shall be included therein fees for such prospective services as are necessary to enforce such judgment." (*Ib.* s. 10.)

WANT OF FORM.—"No action or other proceeding, warrant, judgment, &c., shall be held void or fail for defect of form, but all Justices and other functionaries required to perform any duty under this act shall regard it as a remedial statute, and favorably construe its provisions so as to suppress the mischief mentioned in the preamble." (See *ib.* s. 12.)

SPIRITUOUS LIQUORS—LAW RESPECTING PROHIBITION.

The municipal council of every county, city, town, township or incorporated village has power to pass by-laws for prohibiting the sale of intoxicating liquors and the issue of licenses therefor. (27 & 28 Vic. c. 18, s. 1.)

NO LIQUOR TO BE SOLD.—"From the day on which such by-law takes effect for other purposes as aforesaid, and for so long thereafter as the same continues in force, no person, unless it be for exclusively medicinal or sacramental purposes, or for *bonâ fide* use in some art, trade, or manufacture, or as hereinafter authorized by the third or by the fourth sub-section of this section, shall, within such county, city, town, township, parish, or incorporated village, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly, on

any pretence or by any device, sell or barter, or in consideration of the purchase of any other property, give to any other person any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating." (*Ib.* s. 12.)

"And neither any license issued to any distiller or brewer; nor yet any license for retailing on board any steamboat or other vessel, brandy, rum, whiskey, or other spirituous liquors, wine, ale, beer, porter, cider, or other vinous or fermented liquors; nor yet any license for retailing on board any steamboat or other vessel, wine, ale, beer, porter, cider, or other vinous or fermented liquors, but not brandy, rum, whiskey, or other spirituous liquors; nor yet any other description of license whatever,—shall in anywise avail to render legal any act done in violation of this section." (*Ib.* s. 12, sub. sec. 2.)

Except by Manufacturers.—"Provided always, that any licensed distiller or brewer, having his distillery or brewery within such county, city, town, township, parish, or incorporated village, may thereat expose and keep for sale such liquor as he shall have manufactured thereat, and no other; and may sell the same thereat, but only in quantities not less than five gallons at any one time, to be wholly removed and taken away therefrom in quantities not less than five gallons at a time; and provided also, that any such licensed brewer may sell bottled ale or porter of such manufacture in quantities not less than one dozen bottles of at least three half-pints each at any one time, to be wholly removed and taken away in quantities not less than one dozen such bottles at a time." (*Ib.* sub. sec. 3.)

And Merchants.—"Provided, also, that any merchant or trader having his store or place for the sale of goods within such county, city, town, township, parish, or incorporated village, may thereat keep for sale and sell intoxicating liquor, but only in quantities not less than five gallons (or, in the case of bottled wine, ale, or porter, than one dozen bottles of at least three half-pints each) at any one time, to be wholly removed

and taken away in quantities not less than five gallons (or, in the case of bottled wine, ale, or porter, than one dozen such bottles) at a time." (*Ib.* sub. sec. 4.)

SALE BY AGENT.—"Whoever, by himself, his clerk, servant, or agent, exposes or keeps for sale, or directly or indirectly, on any pretence or by any device, sells or barters, or in consideration of the purchase of any other property, gives to any other person any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage, and a part of which is spirituous or otherwise intoxicating, in violation of the twelfth section of this act, shall incur a penalty of not less than twenty nor more than fifty dollars for each such offence; and whoever, in the employment or on the premises of another, so exposes or keeps for sale, or sells, or barters, or gives, in violation of the said section, shall be held equally guilty with the principal, and shall incur the same penalty." (*Ib.* s. 13.)

PENALTIES.—"Any prosecution for such penalty may be brought by or in the name of the collector of inland revenue within whose official district the offence was committed; or by or in the name of the corporation of the municipality wherein the offence was committed; or by or in the name of any person whether authorized by the council of such municipality or not; and where the by-law is a county by-law, the corporation of the county, equally with that of the municipality comprised therein, and within which the offence was committed, may prosecute, or may authorize any person to prosecute." (*Ib.* s. 14.)

"It shall be the duty of such collector of inland revenue to bring such prosecution, whenever he shall have reason to believe that such offence has been committed, and that a prosecution therefor can be sustained, and would not subject him to any undue measure of responsibility in the premises." (*Ib.* sub. sec. 2.)

BEFORE WHAT TRIBUNAL.—"Such prosecution may be brought before any stipendiary magistrate or before any two other Justices of the Peace for the district in Lower Canada, or for the county or union of counties in Upper Canada,

wherein the offence was committed; or, if the offence was committed in the district either of Montreal or Quebec, then before the recorder or judge of the sessions of the peace at Montreal or Quebec, as may be; or if the offence was committed in any other district in Lower Canada, then before the sheriff of such district,—or, if the offence was committed in any city or town in Upper Canada having a recorder or police magistrate, then before such recorder or police magistrate,—or if the offence was committed in any city or town in Upper Canada not having a recorder or police magistrate, then before the Mayor thereof;

"If such prosecution is brought before any such stipendiary magistrate, recorder, judge of the sessions of the peace, sheriff, police magistrate or mayor, no other justice shall sit or take part therein;

"If such prosecution is brought before any two other Justices of the Peace, the summons shall be signed by both of them; and no other Justice shall sit or take part therein, unless by reason of their absence, or the absence of one of them, nor yet in the latter case, unless with the assent of the other of them;

"In the next following twenty-four sections, the word 'Justice' includes any such stipendiary magistrate, recorder, judge of the sessions of the peace, sheriff, police magistrate, or mayor, or any such two other Justices of the Peace, as the case may be."* (*Ib.* sub-secs. 3, 4, 5, 6.)

LIMITATION.—"Every such prosecution shall be commenced within three months after the alleged offence, and shall be heard and determined in a summary manner, either upon the confession of the defendant, or upon the evidence of one or more witnesses." (*Ib.* s. 15.)

ALLEGATIONS IN COMPLAINT.—"It shall not be necessary, in any such prosecution, to set forth or mention on the face of the complaint, summons, conviction, warrant of distress or

* Though it would appear that offences under this act are now triable before one Justice under 28 Vic. ch. 23, sec. 1, yet it is advisable that at least two Justices should preside in all such cases.

warrant of commitment, the by-law bringing the municipality within the special purview of this act; but such complaint, summons, conviction and warrants may be in the forms C, D, E, F and G respectively, hereto appended, or to the like effect; and unless the defendant specially puts in issue the fact of such by-law being in force, such fact shall be presumed by the Justice; and if such fact is so put in issue, the production of a copy of such by-law, certified under the hand of the clerk or secretary-treasurer of the municipality, and having thereon a certificate under the hand of the same officer of the due publication (if requisite), and communication to the collector of inland revenue of such by-law, or of such communication only, if publication thereof was not requisite, shall be conclusive proof of the passing and of the tenor thereof, and also of such publication and communication thereof, the whole as so certified; and no fact so certified touching such by-law shall be incidentally put in issue or questioned in the course of any such prosecution." (*Ib.* s. 15.)

SEVERAL OFFENCES.—"Two or more offences by the same party may be included in any such complaint, provided the time and place of each offence is stated; and in that case, the forms aforesaid shall be altered, so far as need may be, accordingly:

"But whatever may be the number of the offences so included in one complaint, the maximum of penalty imposable for all shall in no case exceed one hundred dollars." (*Ib.* s. 17.)

EX PARTE.—"If in any such case the defendant fails to appear as required by the summons, the Justice may proceed *ex parte* to the consideration and hearing thereof, and may adjudicate therein, as fully and effectually to all intents as though the defendant had duly appeared in obedience to the summons." (*Ib.* s. 18.)

AMENDMENT.—"Any such complaint may be amended before final hearing, in any matter of form or substance, upon application to that effect, by or for the prosecutor, and without costs, unless otherwise specially ordered by the Justice; and

on such amendment being made, the defendant (should he require it) may have a further delay to plead to the merits, or for plea and proof, as may be ordered; and if the complaint, in the opinion of the Justice, is so defective that a legal conviction cannot be based upon it, and is not amended, the Justice may dismiss the case, with or without costs, in his discretion." (*Ib.* s. 19.)

INFORMALITY.—"No such prosecution shall otherwise be dismissed for any defect, informality, error or omission; but if it appears that the defendant has been, or may have been, materially misled thereby, the Justice may, on such terms as he thinks fit, adjourn the further proceedings in the case to a future day." (*Ib.* 20.)

COSTS.—"If any such prosecution is dismissed, the Justice, should he be of opinion that there was probable cause for the complaint, shall not award to the defendant costs against the prosecutor." (*Ib.* 21.)

SERVICE.—"Every summons or other process, proceeding, or paper, in any such case, may be served, and the service thereof certified under his oath of office, by any bailiff, or by any constable or peace officer, duly appointed for the locality wherein the same is pending." (*Ib.* 22.)

DEPOSITIONS.—"In every such case, if the Justice so orders, or if either party so requires, the depositions of the witnesses shall be reduced to writing by the Justice, or by such clerk as the Justice may appoint to that end, and shall be filed of record in the cause; such clerk shall be entitled to charge and receive, at the rate of ten cents for each hundred words of evidence so reduced to writing, or of two dollars *per diem*, in the discretion of the Justice,—to be entered in taxation, and paid by either party, or partly by each party, as the conviction or judgment in the case may ordain; and if no conviction or judgment is rendered therein within two months after the taking of such evidence, then the fees of such clerk shall be paid in equal shares by each party." (*Ib.* s. 23.)

PROOF OF DATE.—"It shall not be necessary in any such case to prove that an offence was committed on the precise day

specified, in order to obtain a conviction; provided it is proved that the same was committed on or about such day, and before the date of the complaint." (*Ib.* s. 24.)

EVIDENCE OF SALE.—"In all such cases, the delivery of intoxicating liquor of any kind in or from any building, booth or place other than a private dwelling house or its dependencies, if any part thereof is used as a tavern, eating-house, grocery, shop, or other place of common resort,—such delivery in either case being to any one not *bonâ fide* a resident therein,—shall *primâ facie* be deemed evidence of and punishable as a sale in violation of the twelfth and thirteenth sections of this act; and any such delivery in or from a private dwelling house or its dependencies, or in or from any other building, booth or place whatever, to any one, whether resident therein or not, with payment or promise of payment, either express or implied, before, on or after such delivery, shall *primâ facie* be deemed evidence of and punishable as a sale in violation of the said sections." (*Ib.* s. 25.)

COMMITTAL OF WITNESS FOR REFUSING TO ANSWER.—"In any such case the Justice may summon any person represented to him as a material witness in relation thereto: and if such person refuses or neglects to attend pursuant to such summons, the Justice may issue his warrant for the arrest of such person, and he shall thereupon be brought before the Justice; and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol, there to remain until he consents to be sworn, or to affirm, and to answer." (*Ib.* s. 26.)

INTEREST, NO EXCUSE.—"No person shall be incompetent on account of interest in the event of any such case, to give evidence therein." (*Ib.* s. 27.)

WITNESS BOUND TO ANSWER.—"Any person examined or called as a witness in any such case shall be bound to answer all questions put to him, and which the Justice deems relavent, notwithstanding his answers may disclose facts subjecting or tending to subject him to any penalty or other criminal pro-

ceeding; but his answers shall not be used against himself in any prosecution or criminal proceeding." (*Ib.* s. 28.)

TAMPERING WITH WITNESSES.—"Any person who, either before or after the summons of any witness in any such case, tampers with such witness, or by any offer of money, or by threat or otherwise, directly or indirectly, induces or attempts to induce any such person to absent himself or herself or to swear falsely, shall be liable to a penalty of fifty dollars for each such offence." (*Ib.* s. 29.)

DEFENDANT MAY BE IMPRISONED.—"Whenever judgment is rendered under the said twelfth and thirteenth sections of this act for the amount of any penalty and costs, the Justice, if he sees fit, may call on the defendant to declare whether or not he possesses sufficient goods and chattels to satisfy the same,—and if the answer is affirmative, may further examine him as to the sufficiency of such goods and chattels, and as to their being or not being readily available for seizure under a warrant of distress; and if the defendant either answers in the negative, or refuses to answer, or fails to answer to the satisfaction of the Justice, he may be forthwith imprisoned under the warrant of the Justice in the common gaol of the district, or county, or union of counties, for a period of not less than one nor more than three months, counting from the day of his arrival as a prisoner at such gaol; but the defendant, in that case, may at any time obtain his liberation from such imprisonment, by making full payment of such amount and of all subsequent costs." (*Ib.* s. 30.)

ABSENCE OF DEFENDANT.—"If the defendant is not present at the time of the rendering of such judgment, and it is made to appear to the satisfaction of the Justice, by affidavit, that the issue of a warrant of distress would be likely to fail of realizing the full amount thereof in penalties and costs, the defendant may be forthwith imprisoned in such common gaol under warrant of the Justice, for a period of not less than one nor more than three months, counting from the day of his arrival as a prisoner at such gaol; but the defendant, in that

case, may at any time obtain his liberation from such imprisonment by making full payment of such amount and of all subsequent costs." (*Ib.* s. 31.)

IMPRISONMENT AND LIBERATION.—"If the Justice does not so interrogate the defendant, being present,—or if the defendant being interrogated shows that he possesses a sufficiency of available goods and chattels to satisfy the amount of the judgment in penalty and costs,—or if in the absence of the defendant it is not shown to the satisfaction of the Justice that the issue of a warrant of distress would be likely to fail of realizing the full amount of the judgment in penalty and costs,—then in default of immediate payment, such amount shall be levied by warrant of distress out of the goods and chattels of the defendant; and in default of such goods and chattels, or in case of their being insufficient, the defendant shall be imprisoned in such common gaol, under warrant of the Justice, for a period of not less than one nor more than three months, counting from the day of his arrival as a prisoner at such gaol; and the defendant, in that case, may at any time obtain his liberation from such imprisonment by making full payment of such amount and of all subsequent costs." (*Ib.* s. 32.)

APPLICATION OF PENALTIES.—"In Upper Canada, all such penalties shall be disposed of in the following manner, that is to say:

IF BY COLLECTOR.—"If the prosecution was brought by or in the name of a collector of inland revenue, and not under authorization from the council of a municipality, two-third parts shall belong to and retained by such collector,—but subject to the obligation of paying over one of such two-third parts to any person on whose information he may have instituted the prosecution; and the remaining third part shall by the collector be paid over to the Receiver General, for the Upper Canada Building Fund;

IF BY MUNICIPALITY.—"If the prosecution was brought by or in the name of the corporation of a municipality, or by or in the name of any person authorized by the council thereof,

the whole shall belong to such corporation; and the council of the municipality may pay over not more than one-half thereof, either to such person, or to any other person upon whose information the prosecution may have been instituted;

IF BY PRIVATE PARTY.—"If the prosecution was brought by or in the name of any person not so authorized, the penalty shall belong to the corporation of the municipality whose by-law is thereby enforced; and in that case, the council may pay over to any other person upon whose information the prosecution may have been instituted not more than one-half of the whole penalty, or may apply the same to municipal purposes, as they see fit." (*Ib.* s. 34.)

INDEMNIFICATION.—"Any person bringing such prosecution under authorization from a municipal council, shall be indemnified by the corporation of the municipality so authorizing him for all costs therein, whatever may be the result of the prosecution;

"In Upper Canada, any person bringing such prosecution to a successful issue without having been so authorized, shall be indemnified by the corporation whose by-law is thereby enforced for any amount of costs which, without default on his part, he may have failed to recover from the defendant;

"Whenever any person is committed to gaol under the thirtieth, thirty-first, or thirty-second section of this act, the cost of his arrest and conveyance to gaol shall in like manner be borne by the corporation whose by-law is thereby enforced." (*Ib.* s. 35.)

NO APPEAL, &c.—"No conviction, judgment or order, in any such case shall be removed by *certiorari* or otherwise into any of her Majesty's superior courts of record; nor shall any appeal whatever be allowed from any such conviction, judgment or order to any court of General Quarter Sessions, or other court whatever, when the conviction has been made by a stipendiary magistrate, recorder, judge of the sessions of the Peace, sheriff or police magistrate." (*Ib.* s. 36.)

DEFECT OF BY-LAWS.—"No by-law passed under authority and for enforcement of this act, shall be set aside by any court for any defect of procedure or form whatever;

"And no such by-law, adopted by the electors of a municipality under the fourth and fifth sections of this act shall be set aside by any court for any defect whatever, whether of form or substance, affecting the requisition therefor, the authenticity or number of the signatures thereto, the qualification of the signers thereof, or any matter, thing or procedure antecedent to the first publication of the notice given for the poll taken thereon, unless the same be unauthorized by this act." (*Ib.* s. 37.)

OBLIGATION OF OFFICERS.—"Every duty devolving upon any municipal officer under any of the foregoing sections of this act, whether in Lower or in Upper Canada, shall be performed by such officer, with the same powers and under the same penalties and liabilities in all respects whatever as though the same devolved upon him under the express enactments of the Lower Canada Consolidated Municipal Act, or of the act chaptered fifty-four of the Consolidated Statutes for Upper Canada, as the case may be." (*Ib.* s. 38.)

PRESUMPTIONS.—"In prosecutions for sale or barter, in any locality where no by-law passed under authority and for the enforcement of this act is in force, of intoxicating liquor of any kind, without the license therefor by law required, or contrary to the true intent and meaning of the law in that behalf, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered, or the precise consideration therefor, or to the fact of the sale or barter having taken place with his participation or to his own personal and certain knowledge; but the Justice or Justices trying the same, so soon as it may appear to him or them that the circumstances in evidence sufficiently establish the infraction of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly." (27 & 28 Vic. c. 18, s. 39.)

MAY IMPRISON WITNESS.—"In every such prosecution, such Justice or Justices may summon any person represented to him or them as a material witness in relation thereto; and if such person refuses or neglects to attend pursuant to such summons, the Justice or Justices may issue his or their warrant for the arrest of such person; and he shall thereupon be brought before the Justice or Justices, or Justices may issue his or their warrant for the arrest of such person; and he shall thereupon be brought before the Justice or Justices, and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol, there to remain until he consents to be sworn or to affirm and to answer." (*Ib.* s. 39, sub. sec. 2.)

DAMAGES AGAINST INNKEEPERS.—"Whenever in any inn, tavern, or other house or place of public entertainment, or wherein refreshments are sold, or in any place wherein intoxicating liquor of any kind is sold, whether legally or illegally, any person has drunk to excess of intoxicating liquor of any kind therein furnished to him, and while in a state of intoxication from such drinking has come to his death by suicide, or drowning, or perishing from cold, or other accident caused by such intoxication, the keeper of such inn, tavern, or other house or place of public entertainment, or wherein refreshments are sold, or of such place wherein intoxicating liquor is sold, and also any other person or persons who for him or in his employ delivered to such person the liquor whereby such intoxication was caused, shall be jointly and severally (*solidairement*) liable to an action as for personal wrong, if brought within three months thereafter, but not otherwise, by the legal representatives of the deceased person; and such legal representatives may bring either a joint and several action against them, or a separate action against either or any of them; and by such action or actions may recover such sum, not less than one hundred or more than one thousand dollars, in the aggregate of such actions, as may therein be assessed by the court or jury as damages." (*Ib.* s. 40.)

LIABILITY FOR ASSAULT.—"If a person in a state of intoxication assaults any person or injures any property, whoever

furnished him with the liquor which occasioned his intoxication, if such furnishing was in violation of this act or otherwise in violation of law, shall be jointly and severally (*solidairement*) liable to the same action by the party injured as the person intoxicated may be liable to; and such party injured, or his legal representatives, may bring either joint and several actions against the person intoxicated and the person or persons who furnished such liquor, or a separate action against either or any of them."* (*Ib.* s. 41.)

NOTICE NOT TO FURNISH.—"The husband, wife, parent, brother, sister, tutor, guardian, or employer, of any person who has the habit of drinking intoxicating liquor to excess, or the parent, brother, or sister of the husband or wife of such person, or the tutor or guardian of any child or children of such person, may give notice in writing, signed by him or her, to any person licensed to sell, or who sells or is reputed to sell, intoxicating liquor of any kind, not to deliver intoxicating liquor to the person having such habit; and if the person so notified do at any time within twelve months after such notice, either himself, or by his clerk, servant, or agent, otherwise than in terms of a special requisition for medicinal purposes, signed by a licensed medical practitioner, deliver in or from any building, booth, or place occupied by him, and wherein or wherefrom any such liquor is sold, suffer to be delivered any such liquor to the person having such habit, the person giving such notice may, in an action as for personal wrong (if brought within six months thereafter but not otherwise) recover of the person notified such sum not less than twenty nor more than five hundred dollars, as may be assessed by the court or jury as damages; and any married woman may bring such action in her own name, without authorization by her husband, and all damages recovered by her go to her separate use; and in case of the death of either party, the action and right of action

* The tavern-keeper who furnishes liquor after served with a notice not to deliver, under the forty-second section, will be liable under this section, and should be proceeded against.

given by this section shall survive to or against his legal representatives."* (*Ib.* s. 42.)

VOID SECURITIES.—"Any payment or compensation for liquor furnished in contravention of this act, or otherwise in violation of law, whether made in money or securities for money, or in labour or property of any kind, shall be held to have been received without any consideration, and against law, equity, and good conscience, and the amount of value thereof may be recovered from the receiver by the party who made the same; and all sales, transfers, conveyances, liens, and securities of every kind, in whole or in part, made, granted, or given, for or on account of liquor so furnished in contravention of this act, or otherwise in violation of law, shall be wholly null and void, save only as regards subsequent purchasers or assignees for value, with notice; and no action of any kind shall be maintained, either in whole or in part, for or on account of any liquor so furnished in contravention of this act or otherwise in violation of law."† (*Ib.* s. 43.)

SALE BETWEEN SATURDAY AND MONDAY.—"In all places where by law intoxicating liquors, or any particular description or descriptions of such liquors, are allowed to be sold by retail,

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* The notice may be similar to the following, or to the like effect:

Mr. Jefferson Smith, innkeeper, of the township of —— (*or as the case may be*) you will please take notice, as follows:

1st. That I —— the wife (*or a son or daughter, as the case may be*) of ——, of lot ——, in the —— concession of —— (*or if in a city or town, give the street and number of dwelling, or other good description*) farmer.

2nd. That I reside with the said —— (*or as the case may be.*)

3rd. That the said —— has the habit of drinking intoxicating liquors to excess.

4th. That you are not to deliver intoxicating liquors to the said ——.

The trial under this section may be in the division court, if not more than forty dollars claimed.

At the trial, the person who brings the action should be prepared to prove: 1. The service of the notice, and date and hour of service; 2. The relationship; 3. The fact that the party has the habit of drinking intoxicating liquors to excess; 4. The fact that liquor was furnished by the tavern-keeper, his clerk, servant, or agent, to the drunkard, after the service of the notice; 5. The grief and anxiety the plaintiff sustains in consequence of the drunkenness. If the husband, when drunk, is violent and likely to do personal violence, it should be proved.

† In the country it would be well to serve each tavern-keeper or other person licensed to sell liquor, within a few miles of the drunkard's home, with a notice, because money, &c., paid before notice cannot be recovered back.

no sale or other disposal of such liquors shall take place therein or on the premises thereof, or out of or from the same to any person whomsoever, from the hour of nine on Saturday evening till the hour of six on the Monday morning thereafter, except in cases where a special requisition for medicinal purposes, signed by a licensed medical practitioner or by a Justice of the Peace, is produced by the vendee or his agent; nor shall any such liquors be permitted to be drunk in any such place except by travellers or by persons *bona fide* resident, lodging or boarding thereat during the time prohibited by this section for the sale of the same.

"For every offence under this section a penalty of not less than ten nor more than fifty dollars, with costs, shall, in case of conviction, be recoverable from and leviable against the goods and chattels of the person or persons who are the proprietors in occupancy or tenants or agents in company of such place or places, and who are found by himself, or herself, or themselves, or his, her or their servants or agents, to have committed or aided in committing such offence. (*Ib.* s. 44.)

OFFICERS MAY ENTER TAVERN.—"Any police officer or constable being thereto authorized in writing, as hereinafter is provided, may at any time enter into any inn, tavern or other house or place of public entertainment, or wherein refreshments or intoxicating liquors are sold, or reputed to be sold, whether legally or illegally; and any person being therein or having charge thereof, who refuses, or after due summons fails to admit such police officer or constable into the same, or offers any obstruction to his admission thereto, shall be liable to a penalty of not less than ten nor more than fifty dollars for every such offence;

"Any two or more Justices of the Peace may grant such authorization to avail within any city, town, township, parish, or incorporated village, therein designated and being within the jurisdiction of such Justices, for any term of time therein specified, not exceeding three months;

"The Justices of the Peace who granted such authorization or any one or more of them, may at any time cancel the same, by a written order to that effect under their or his hand,

delivered to such police officer or constable; and any police officer or constable acting or assuming to act under any authorization after the same has been so cancelled, shall be guilty of a misdemeanor." (*Ib.* s. 45.)

FORMS TO BE USED.—"Any person may be the informant or complainant in prosecuting under either of the last preceding two sections of this act; all proceedings shall be begun within thirty days from the date of the offence; all informations, complaints or other necessary proceedings may be brought and heard before any one or more Justices of the Peace for the district, or county, or union of counties, wherein the offence or offences were committed or done; the mode of procedure in, and the forms appended to the Consolidated Statute of Canada respecting the duties of Justices of the Peace out of sessions in relation to summary convictions and orders, may be followed as regards all such cases and proceedings; and all penalties which may be recovered therein shall belong to the corporation of the city, town, township, parish or incorporated village wherein the offence was committed."* (*Ib.* s. 46.)

The penal clauses of Con. Stat. U. C. c. 54 having been repealed by 27 & 28 Vic. c. 18, it became necessary to amend the law, and the legislature at its last session passed the following act:

PENALTY.—"If any person shall, without license duly issued by the competent authority, sell or cause to be sold any wine, rum, brandy or other spirituous liquors, beer, ale, cider or other fermented liquors, to be drunk in any ale-house, beer-house or other house or place of public entertainment in which the same are sold, or shall, without such license as aforesaid, sell or cause to be sold by retail any such liquors in any shop, store or place other than an inn, ale-house, beer-house or other house or place of public entertainment, or if any person being duly licensed to sell intoxicating liquors by wholesale or retail shall sell or cause to be sold any such liquors, in contravention of the law, every person so offending shall incur a penalty of

* Penalty under 44th section, now under 29 Vic., to be divided between informer and municipality.

not less than ten dollars nor more than fifty dollars, with costs, and may be convicted upon the oath of one or more credible witness or witnesses before any Justice or Justices of the Peace having jurisdiction in the place in which such offence is committed; and it shall and may be lawful for such Justice or Justices to issue a warrant of distress to any constable or peace officer against the goods and chattels of the said offender, and in case no sufficient goods be found to satisfy such penalty and costs, then it shall and may be lawful for the said Justice or Justices to order that the persons so convicted be imprisoned in any common gaol in the county or city in which such conviction takes place for any term not less than ten days nor more than thirty days, unless the amount of penalty and costs be sooner paid, and one-half of the said penalty shall go to the informer, the other half to the municipality." (28 Vic. c. 22, s. 1.)

"The provisions of the act respecting Justices of the Peace, Consolidated Statutes of Canada chapter one hundred and three, shall apply to proceedings under this act, except in so far as altered by this act." (*Ib.* s. 2.)

"This act shall apply to Upper Canada only." (*Ib.* s. 3.)

(C.) FORM OF COMPLAINT.

PROVINCE OF CANADA, District (*or as case may be*) of ——

A. B. (*designate duly and sufficiently the corporation or other prosecutor, as the case may require,*) in behalf of Our Sovereign Lady the Queen, prosecutes C. D. of (*designate duly and sufficiently the defendant,*) and complains: That the said C. D., at (*designate duly the municipality,*) on (*designate the time or times,*) and at sundry times before or since, did (*here state succinctly the offence charged,*) contrary to the Temperance Act of 1864, then and there being fully in force; whereby and by force of the said act, the said C. D. hath become liable to pay the sum of ——.

Wherefore the said prosecutor prays that the said C. D. be condemned to pay the said sum of , with costs.

(D.) FORM OF SUMMONS.

PROVINCE OF CANADA, District (*or as case may be*) of ——

To C. D. of (*designate duly and sufficiently the defendant.*)

You are hereby commanded to appear before (us *or* me, *as the case may be*) the undersigned Justices of the Peace for the said district (*or as the case may be*) at (*name the place,*) on the —— day of —— at the hour of —— in the —— noon, (*if the summons be issued by two Justices and not by a*

stipendiary magistrate, recorder, judge of the sessions of the Peace, or police magistrate, add here the words or before such other Justices of the Peace for the said district, *or as the case may be*, as may then be there,) to answer to the matters charged against you by (*designate the prosecutor,*) who prosecutes you in Her Majesty's behalf, as the same are set forth in the complaint hereto annexed,—otherwise judgment will be given against you by default.

Given under our (*or* my) hand and seal, this —— day of —— in the year of Our Lord one thousand eight hundred and —— in the district (*or as case may be*) aforesaid.

(*Signatures and Seals.*)

CERTIFICATE OF SERVICE.

I, the undersigned, E. F. of (*designate duly the bailiff or other party certifying,*) do hereby certify, upon my oath of office, that on the —— day of ——, I did serve the within summons, and the complaint thereto annexed, on the within named defendant, at the hour of —— of the clock in the —— noon, by leaving a true and certified copy of the said summons and of the said complaint at the domicile of the said defendant, in the ——, speaking to —— (*or, if the service was personal,* by speaking to him and leaving with him a true and certified copy of the said summons and of the said complaint at ——.)

(*To be dated and signed in the ordinary manner.*)

(E.) FORM OF CONVICTION.

PROVINCE OF CANADA, District (*or as case may be*) of ——. } Be it remembered that on the ——— day of ———, in the year Our Lord one thousand eight hundred and——, at (*designate the place where the conviction is had*) in the said district (*or as case may be*), C. D., of (*designate the defendant,*) is convicted before the undersigned, G. H., Esquire, of —— (*designating the official function of the party convicting, as the case may be*) for that he the said C. D. did (*state succinctly the offence*) and I (*or* we) adjudge the said C. D. for his said offence, to forfeit and pay to (*designate the prosecutor*) the sum of ——, and also the further sum of —— for costs, in this behalf.

Given under my (*or* our) hand and seal, the day and year first above mentioned.

(*Signature and Seal.*)

(F.) FORM OF WARRANT OF DISTRESS.

PROVINCE OF CANADA, District (*or as case may be*) of ——. } G. A., Esquire, of —— (*designating the official function of the party issuing the warrant.*)

To any bailiff, constable or other officer of the Peace in and for the said district (*or as case may be*):

Whereas, C. D., of ——, (*designate the defendant*), hath been convicted before —— of having (*state the offence,*) and for such offence adjudged to

pay A. B. (*designate the prosecutor*) the sum of ——, and also the further sum of —— for costs in that behalf:*

These are therefore to command you, and each of you, to distrain the goods and chattels of the said C. D., wheresoever they may be found within the said district (*or as case may be*), and thereon to levy the said penalty and costs, making together the sum of ——; and if, within the space of four days next after such distress made, the said last mentioned sum of ——, together with the reasonable charges of taking and keeping the said distress, are not paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising from such sale that you do pay the said sum of —— unto the said A. B., refunding to the said C. D. the overplus, the reasonable charges of taking, keeping and selling, the said distress being first deducted; and you are to certify to me (*or* us) with the return of this warrant what you shall have done in the execution thereof. Herein fail not.

Given under my (*or* our) hand and seal, this —— day of —— in the year of our Lord one thousand eight hundred and ——, at —— in the district (*or as case may be*) aforesaid.

(*Signature and Seal.*)

(G. 1.) FORM OF WARRANT OF COMMITMENT UNDER SECS. 30 OR 31.

PROVINCE OF CANADA, District (*or as case may be*) of ——. } To all or any of the bailiffs, constables and other officers of the peace, in the district (*or as case may be*) of —— and to the keeper of the gaol of the same district (*or as case may be.*)

Whereas, &c., (*as in the foregoing form, to the mark**); and whereas (*state circumstances under which, in terms of section thirty or thirty-one, as case may be, the warrant is issued*); these are therefore to command you the said bailiffs, constables or officers of the peace, or any one of you, to take the said C. D., and him safely convey to the gaol of the said district (*or as case may be*), and there deliver him to the said keeper thereof, together with this warrant; and I (*or* we) do hereby command you the said keeper of the said gaol to receive the said C. D. into your custody in the said gaol, and to imprison him for the space of —— from the day of his arrival as a prisoner thereat, unless the said last mentioned sum of ——, and all the costs of the commitment and conveying of the said C. D. to the said gaol, amounting to the further sum of ——, are sooner paid unto you the said keeper; and for so doing, this shall be your sufficient warrant.

Given, &c., (*as in foregoing form* F.)

(G. 2.) FORM OF WARRANT OF COMMITMENT UNDER SECTION THIRTY-TWO.

(*As in foregoing form* G. 1, *to same mark**); And whereas afterwards, on the —— day of ——, in the year —— I (*or as case may be*) issued a warrant of distress for the levying of the said amount, together with the reasonable charges of said distress; And whereas (*state circumstances under which, in terms of section thirty-two, the warrant is issued*); These are therefore to command you the said bailiffs, constables, or officers of the Peace, or any one of you, to take the said C. D., and him safely convey to

the gaol of the said district (*or as case may be,*) and there deliver him to the said keeper thereof, together with this warrant; and I (*or* we) do hereby command you the said keeper of the said gaol to receive the said C. D. into your custody in the said gaol, and there to imprison him for the space of ——, from the day of his arrival as a prisoner thereat, unless the said last mentioned sum of —— and all the costs of the said distress, and of the commitment and conveying of the said C. D. to the said gaol, amounting to the further sum of ——, are sooner paid unto you the said keeper; and for so doing this shall be your sufficient warrant.

Given, &c. (*as in foregoing form* G. 1.)

(H.) FORM OF AUTHORIZATION UNDER SECTION FORTY-FIVE.

PROVINCE OF CANADA, District (*or as case may be*) of } To J. S. of —— Police Officer (*or* Constable, *as case may be*)

You are hereby authorized, in terms of the Temperance Act of 1864, by us (*or as case may be*) of her Majesty's Justices of the Peace, and within whose jurisdiction as such the city (*or* town, *or* township, *or* parish, *or* incorporated village, (*as case may be*) of —— (*designate municipality within which authorization is to avail*) is situate, at any time or times not exceeding (*designate the term of time for which the authorization is granted, not being more than three months*) from this day, within the said city (*or as case may be*) to enter into any inn, tavern, or other house or place of public entertainment, or wherein refreshments or intoxicating liquors are sold or reputed to be sold, whether legally or illegally.

Given under our hands and seals this —— of —— in the year of our Lord one thousand eight hundred and ——.

STABBING, &c.

MALICIOUSLY STABBING, &c.—"Any person who unlawfully and maliciously inflicts upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cuts, stabs, or wounds any other person, shall be guilty of a misdemeanor, and shall be imprisoned, with hard labour, in any gaol or prison for any term less than two years, or in the penitentiary for any term not less than two nor more than five years." (Con. Stat. C. c. 91, s. 8.)*

ATTEMPTS TO STAB, &c.—"Any person who unlawfully and maliciously shoots at any person, or by drawing a trigger, or

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* Though requested so to do, the Justice should not summarily dispose of any case in which it comes out in evidence that a person has been cut, stabbed, or wounded.

in any other manner attempts to discharge any kind of loaded arms at any person, or stabs, cuts, or wounds any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years."* (*Ib.* s. 7.)

SUICIDE.

A suicide is one that deliberately puts an end to his own existence, or commits any act the consequence of which is his own death. It is considered in law a felony committed by a person against himself; so that an attempt to commit suicide is a misdemeanor, punishable with fine or imprisonment. But in order to constitute a person *felo de se*, or self-felon, it is essential that he be at years of discretion and in his senses at the time he committed the offence. (See article "Misdemeanor," *ante*, p. 385.)

SUMMMONS.

For summons in indictable offences, see Con Stat. C. c. 102, s. 2 (*ante*, page 27.)

For summons in summary convictions, see Con. Stat. C. c. 103, s. 1 (*ante*, page 69.)

* Owing to the carelessness of the persons who examine the gun after an attempt to shoot, it is frequently difficult to prove that the gun was loaded. If this cannot be proved, then the person should be sent for trial for the common assault, unless he proves that the gun was not loaded. To establish a case of assault, it is not necessary to prove that the trigger was drawn. The presenting the gun or pistol so near as to have been dangerous, if it, being loaded, had gone off, is sufficient to establish a case for common assault.

SUPPORT OF ILLEGITIMATE CHILDREN.

FATHER LIABLE FOR NECESSARIES.—"Any person who furnishes food, clothing, lodging or other necessaries to any child born not in lawful wedlock, may maintain an action for the value thereof against the father of such child, if the child was a minor at the time the necessaries were furnished, and was not residing with his or her reputed father and maintained by him as a member of his family." (Con. Stats. U. C. c. 77, s 4.)

PROOF REQUIRED.—"Where the person suing for the value of such necessaries is the mother of such child, or a person to whom the mother has become accountable for such necessaries, the fact of the defendant being the father of such child shall be proved by other testimony than that of the mother." (*Ib.* s. 5.)

AFFIDAVIT TO BE FILED.—"No action shall be sustained under the two last sections, unless it be shown upon the trial thereof that while the mother of the child was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing before some one of Her Majesty's Justices of the Peace for the county or city in which she resides, declaring that the person who may be afterwards charged in such action is really the father of such child, nor unless she deposited such affidavit within the time aforesaid in the office of the clerk of the peace of the county, or clerk of the city, as the case may be." (*Ib.* s. 6.)

"Such affidavit shall not be evidence of the fact of the defendant being the father of such child." (*Ib.* s. 7.)

"This act shall not take away or abridge any right of action or remedy, which, without the act, might have been maintained against the father for an illegitimate child." (*Ib.* s. 8.)

SURETIES OF THE PEACE AND GOOD BEHAVIOUR.

Very great discretion is given to the Justice in this matter. He should not require a person to give surety for his good behaviour or to keep the peace, unless upon sworn information that the said person has either made threats of violence touching

some person or some one of his or her family, or the firing of his or her dwelling; or unless it appears in evidence that such person has already committed a breach of the peace.

Every person fined for a breach of the peace should be required to give security for his good behaviour, and in default of his so doing should be sent to prison.

The recognizance may be for a time certain, and may be for several years if the Justice deems it advisable, though it is not usual to require security for more than one year; or it may be for the appearance, at the next sessions, of the party so bound.

The recognizance, when taken, should be forwarded to the clerk of the peace.

The law does not require the publication of the names of the persons under sentence to keep the peace, but it might be well for the court of Quarter Sessions to consider as to whether good would not result from the publication quarterly of persons so bound.

INFORMATION BEFORE JUSTICE TO COMPEL FINDING OF SURETIES FOR THE PEACE OR BEHAVIOUR.

CANADA: Count of —— to wit. } Be it remembered, that on the —— day of ——, A.D. 18—, A. B., of ——, in the said count of —— [*gentleman*], came personally before me ——, one of her Majesty's Justices of the Peace in and for the said count , at ——, of ——, in the count aforesaid, and on his oath informed me that C. D., of the —— of ——, in the count of —— [*labourer*], did on the —— day of ——, A.D. 18—, most violently and maliciously declare and threaten, &c.; and did also on —— [*here state the defendant's threats and acts*]; and that from the above premises, he, this complainant, is afraid that the said C. D. will do him some grievous bodily injury; and therefore prays that the said C. D. may be required to find sufficient sureties to keep the peace [*or*, to be of good behaviour, *as may be required*] towards him, this complainant. And this complainant also says that he doth not make this complaint against nor require such sureties from the said C. D. from any hatred, malice, or ill-will, but merely for the preservation of his life and person from injury.

A. B.

Sworn before me, at the —— of ——, this —— day of ——, A.D. 18—. J. P.

WARRANT THEREON.

To E. F., constable of ——, in the said count , and all others whom this may concern:

Whereas A. B., of ——, in the said count [*gentleman*], hath this day made information on oath before me ——, one of her Majesty's Justices of the Peace in and for the said count , at ——, that C. D., of —— [*labourer*], did on the —— day of ——, A.D. 18— [*here set forth the complaint in the past tense, describing the complainant by his name.*] And therefore the said A. B. hath prayed that the said C. D. may be required to find sufficient sureties to keep the peace [*or*, to be of good behaviour] towards him the said A. B. I do therefore hereby require and command you to apprehend and bring the said C. D. before me or some other of her Majesty's Justices of the Peace for the said count , on the —— day of ——, A.D. 18—, at ——, to answer the said complaint, and to find sufficient sureties to keep the peace [*or*, be of good behaviour] towards her Majesty and all her liege people, and especially towards the said A. B., for such term as shall be then enjoined him, and to be further dealt with according to law.

Given under my hand and seal, the —— day of ——, A.D. 18—.

J. P. [L. S.]

RECOGNIZANCE FOR THE PEACE OR GOOD BEHAVIOUR.

CANADA: Count of ——— to wit. } Be it remembered, that on the —— day of ——, A.D. 18—, A. O., of the ——— of ———, in the count aforesaid [*yeoman*], A. S., of the same place [*yeoman*], and B. S., of the same place [*yeoman*], came before me H. C., one of the Justices of our said Lady the Queen assigned to keep the peace in and for the said count , and acknowledged themselves to owe to our said Lady the Queen, to wit, the said A. O. the sum of ——, and the said A. S. the sum of ——, and the said B. S. the sum of ——, of good and lawful money of Canada, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. O., shall fail in performing the condition underwritten:

[*If the party be bound merely to keep the peace or be of good behaviour for a specified time, the condition will be thus:*] The condition of this recognizance is such, that if the above bounden A. O. shall keep the peace [*or*, be of good behaviour] towards the Queen and all her liege people, and especially towards A. J. of —— the said county [*gentleman*], for the term of —— now next ensuing, then the said recognizance shall be void, or else remain in full force.

[*If the party be bound to appear at the sessions, the condition of this recognizance will be thus:*] The condition of this recognizance is such, that if the said C. D. shall personally appear at the next Quarter Sessions of the Peace to be holden for the said —— count , to do and receive what shall be then and there required of him by the court, and in the meantime shall keep the peace [*or*, be of good behaviour] towards her Majesty and all her liege people, and especially towards the said A. B., then the said recognizance shall be void or else remain in force.

DISCHARGE OF ONE COMMITTED FOR WANT OF SURETIES.

CANADA: Count of ——— to wit. } To E. S., the keeper of her Majesty's gaol [*or*, house of correction] for the said —— count , and others whom this may concern:

You are hereby commanded to discharge out of your custody the body of A. D., of ——, in the said county [*labourer*], he having this day entered into a recognizance before me, J. P., one of her Majesty's Justices of the Peace in and for the said county, in the sum of ——, with two sureties in —— each, to keep the peace [*or*, be of good behaviour] towards her Majesty and all her liege people, and especially towards A. B., of ——— [*gentleman*], for the space of ——— now next ensuing.

Given under my hand and seal, this —— day of ——, 18—.

THREATS TO ACCUSE OF CRIME.

FALSE ACCUSATIONS, TO EXTORT.—"Any person who accuses or threatens to accuse any person of the abominable crime of buggery, committed either with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise, or threat to any person whereby to move or induce such person to commit or permit the said abominable crime, with a view or intent in any of the cases aforesaid to extort or gain from such person, and by intimidating such person by such accusation or threat extorts or gains from such person any property, shall be guilty of felony, and shall be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (Con. Stat. C. c. 92, s. 6.)

DEMANDING MONEY OR GOODS BY THREATENING LETTERS.—"Any person who knowingly sends or delivers any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; and any person who accuses or threatens to accuse, or knowingly sends or delivers any letter or writing accusing or threatening to accuse any person of any crime punishable by law with death or transportation; or of any

assault with intent to commit any rape, or of any attempt or endeavour to commit rape, with a view or intent to extort or gain from such person any chattel, money, or valuable security, shall respectively be guilty of felony, and shall be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 7.)

See "Sureties of the Peace," *ante*, p. 531.

TIMBER—OFFENCES RELATING TO.

CUTTING, DESTROYING OR STEALING TREES, &c.—"If any person steals or cuts, breaks, roots up, or otherwise destroys or damages, with intent to steal or unlawfully carry away, or procures any person or persons to steal, or to cut, break, root up, or otherwise destroy or damage, with intent to steal or unlawfully carry away, any tree or sapling, standing, growing, or being on the land of any other, the injury done to such other person thereby being in amount more than ten dollars; every such offender being convicted thereof shall be guilty of a misdemeanor, and shall be punished at the discretion of the court by fine not exceeding the sum of one hundred dollars, or by imprisonment in any common gaol for a term not exceeding six months, or by both; and the said fine, or any portion thereof, the court may in its discretion award to the person injured."* (23 Vic. c. 37, s. 1.)

PURCHASING TREES, &c., UNLAWFULLY OBTAINED.—"If any person receives or purchases any tree or sapling, trees or saplings, or any timber made therefrom, exceeding in value the sum of ten dollars, knowing the same to have been stolen, or unlawfully cut or carried away, such receiver or purchaser shall be guilty of a misdemeanor, and may be indicted and convicted thereof, or whether the principal offender has or has not

* Under this section it is only necessary that the damage shall be to the amount of ten dollars. That damage may be partly caused by the injury done in removing the timber cut.

been convicted, or be or be not amenable to justice, and shall be liable to the same punishment as the principal offender."* (*Ib.* s. 2.)

NOT TO AFFECT ANY CRIMINAL PROCEEDINGS.—"Nothing in this act contained shall prevent the adoption of any other criminal proceedings, which before the passing of this act might have been had." (*Ib.* s. 4.)

SEIZURE OF TIMBER FOR TOLLS.—"If the true owner of any timber which has passed through any of the works of a company cannot be ascertained, or if there be reasonable grounds to apprehend that the tolls thereon have not been paid by the owner or reputed owner or person in charge, any mayor, reeve, or Justice of the Peace, having jurisdiction in the locality through or adjoining which such navigation extends, or where the timber may be found, if within twenty miles of any such works, shall, upon the oath of any director or servant of the company that the just tolls have not been paid, issue a warrant for the seizure of such timber, or so much thereof as will be sufficient to satisfy the tolls, which warrant shall be directed to any constable, or any person sworn in as a special constable for that purpose, at the discretion of the magistrate, and shall authorize the person to whom it is directed, if the tolls are not paid within fourteen days from the date thereof, to sell the said timber, and out of the proceeds to pay to the company the just tolls,† together with the costs of the warrant and sale, rendering the surplus on demand to the owner." (Con. Stat. C. c. 68, s. 66.)

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* There are many cases where it will be difficult to convict the receiver unless the thief is used as a witness for the crown. The Justice should not examine the thief as a witness, but should send them both for trial.

† The just tolls are as follows:—

Red and White Pine, per piece,	1d.
Oak, Elm, and other hardwood, per piece,	1½d.
Spars, per piece,	3d.
Masts, per piece,	5d.
Saw Logs, per piece,	1-12d.
Sawed lumber per M. board measure,	1d.
Staves per M.	15d.
Firewood, shingles, bolts and other timber, per cord,	2d.

MALICIOUS INJURIES TO TIMBER, SLIDES, &c.—"If any person wilfully and maliciously burns, breaks down, injures, cuts, removes or destroys, in whole or in part, any dam, pier, slide, boom or other work of any such company, or any chain or other fastening attached thereto, or wilfully and maliciously impedes or blocks up any channel or passage intended for the transmission of timber, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by fine and imprisonment in the common gaol for any term not exceeding one year, at the discretion of the court before whom the offender is convicted." (*Ib.* s. 67.)

IMPEDING THE OPERATION OF A COMPANY.—"If any person resists or impedes any of the servants of any such company in the transmission of any timber through any such works, or in carrying out any regulations of the company for the greater safety and regularity of such transmission, or resists any such servants who may require access to any raft or other timber to ascertain the just tolls thereon, or in any way molests such company or its servants in the exercise of any rights secured to them by this act, such person shall upon conviction thereof in a summary way, before a Justice of the Peace having jurisdiction in the locality in or adjoining which the offence has been committed, be sentenced to pay a fine of not more than ten dollars nor less than one dollar, together with all costs, to be paid within a time to be limited by the said Justice, and in default to be levied as next hereafter provided." (*Ib.* s. 68.)

PROCEDURE.—"In any proceeding or prosecution before any Justice of the Peace under this act the Justice may summon the party complained against to appear at a time and place to be named in the summons, and if he does not appear accordingly, then upon proof of the due service of the summons upon such party, either personally or by leaving a copy thereof at his usual place of abode, or with any adult person belonging to the raft to which such party is attached, the Justice may either proceed to hear and determine the [illegible] *ex parte*, or issue his warrant for apprehending and bringing such party before himself or some other Justice of the Peace, [illegible] the Justice may

without previous summons issue such warrant, and the Justice before whom the parties appear or are brought shall proceed to hear and determine the case." (*Ib.* s. 69.)

How FINES, &c., RECOVERABLE.—"The fines and forfeitures authorized to be summarily imposed by this act may be recovered upon information and complaint before any Justice of the Peace of the county within which the same have been incurred, and shall be levied and collected by distress and sale of the offender's goods and chattels, under the authority of a warrant of distress for that purpose to be issued by the Justice before whom the conviction has been had." (*Ib.* s. 71.)

IMPRISONMENT.—"In case there are no goods or chattels to satisfy such warrant, the offender shall be committed to the common gaol of the district or county for any period not exceeding one month; but this section shall not prevent the issuing of a warrant of commitment in the first instance, upon a conviction for any offence mentioned in the sixty-seventh section of this act." (*Ib.* s. 71.)

FINES, &c., TO WHOM TO BE PAID.—"All fines and forfeitures collected under the authority of this act shall be paid to the treasurer of the company owning the work in respect of which such fines and forfeitures have been imposed, for the use of such companies respectively." (*Ib.* s. 72.)

OFFICERS OF COMPANY MAY BE WITNESSES.—"In any action or suit brought by or against any such company, upon any contract, or for any matter or thing whatsoever, any stockholder or any officer or servant of the company shall be competent as a witness, and his testimony shall not be deemed inadmissible on the ground of interest or of his being such servant or officer." (*Ib.* s. 73.)

LIMITATION OF ACTION.—"If any suit be brought against any person for any matter or thing done in pursuance of this act, such suit shall be brought within six months next after the fact committed, and not afterwards, and the defendant therein may plead the general issue only, and give this act and the special matter in evidence on the trial." (*Ib.* s. 74.)

TREASON.

HIGH TREASON DEFINED. — "If any person compasses or imagines the death of our Lady the Queen, or levies war against her Majesty in Upper Canada, or be adherent to the Queen's enemies in Upper Canada, giving to them aid and comfort therein or elsewhere, and be thereof proveably attainted of open deed by people of his condition, such person so attainted shall be deemed guilty of treason, and shall suffer death." (Con. Stat. U. C. c. 97, s. 1.)

OFFICER OR SOLDIER CORRESPONDING WITH THE ENEMY.—"If any officer or soldier in her Majesty's army holds correspondence with any rebel or enemy of her Majesty, or gives them advice or intelligence either by letters, messages, signs, or tokens, or in any manner of way whatsoever, or treats with such rebels or enemies, or enters into any condition with them without her Majesty's license, or the license of the general, lieutenant-general, or chief commander, every such person so offending is guilty of high treason, and shall suffer death." (*Ib.* s. 2.)

SENTENCE IN HIGH TREASON.—"In all cases of high treason, the sentence or judgment to be pronounced against any person convicted and adjudged guilty thereof shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead, and that afterwards the body of such person shall be dissected and anatomized." (*Ib.* s. 3.)

PROCEEDINGS AGAINST PERSONS INDICTED FOR HIGH TREASON. —"In case of an indictment being found by a grand jury at any court of competent jurisdiction in Upper Canada against any person for high treason, misprision of treason, or treasonable practices, and in case the sheriff makes return to any warrant or capias issued thereupon that such person is not to be found in his county, the Governor, by and with the advice and consent of the executive council, may, immediately upon the making of such return, issue a proclamation, to be published not less than six weeks in the *Canada Gazette*, calling

upon and requiring the person against whom such indictment has been found to surrender himself to the custody of the sheriff of the county within which the court was held before which such indictment was found, by a day to be named in the said proclamation, such day not being less than three months from the first publication of such proclamation in the *Gazette;* and if such person does not by the day in such proclamation named surrender himself to the custody aforesaid, and submit to justice, then and in such case, after the day in such proclamation named, he shall stand and be adjudged attainted of the crime expressed and set forth in such indictment, and shall suffer and forfeit as a person attainted of such crime by the laws of the land ought to suffer and forfeit." (*Ib.* c. 107, s. 10.)

RELATING TO REVENUE.—"Nothing contained in the criminal acts of the province of Canada shall affect or alter any act so far as it relates to the crime of high treason or to any branch of the public revenue." (Con. Stat. C. c. 90, s. 1.)

PETIT TREASON.—"Every offence which, on or before the 1st of January, 1842, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder." (*Ib.* c. 91, s. 1.)

TELEGRAPH—OFFENCES RELATING TO.

WHAT MESSAGES ENTITLED TO PREFERENCE.—"Any message in relation to the administration of justice, arrest of criminals, the discovery or prevention of crime, and the government messages or despatches, shall always be transmitted in preference to any other message or despatch, if required by persons connected with the administration of justice, or any person thereunto authorized by the provincial secretary." (Con. Stat. C. c. 67, s. 15.)

OPERATOR DIVULGING SECRETS.—"Any operator of a telegraphic line, or any person employed by a telegraphic com-

pany, divulging the contents of a private despatch, shall be guilty of a misdemeanor, and on conviction shall be liable to a fine not exceeding one hundred dollars, or to imprisonment for a period not exceeding three months, or both, in the discretion of the court before which the conviction is had." (*Ib.* s. 16.)

MALICIOUS INJURIES TO TELEGRAPH WORKS.—"Any person who wilfully and maliciously cuts, breaks, molests, injures, or destroys any instrument, cap, wire, post, line, pier, or abutment, or the materials or property belonging thereto, or any other erection used for or by any line of electro-magnetic telegraph in operation in this province, under any act in force herein, or who wilfully or maliciously in any way obstructs, disturbs, or impedes the action, operation, or working of any such wire of telegraph, shall on conviction thereof be deemed guilty of a misdemeanor, and be punished by a fine not exceeding forty dollars, or be imprisoned for a term not exceeding one month, or both, at the discretion of the court before which the conviction is had." (*Ib.* s. 21.)

JURISDICTION OF JUSTICES. — "The jurisdiction over all offences against this act shall be in any Justice of the Peace in any parish, village, city, town, or county where the offence has been committed, or in which the offender may be found, and the proceedings therein shall be summary." (*Ib.* s. 22.)

HOW PENALTIES ENFORCED. — "The fine imposed may, if not forthwith paid, be levied, with all costs of the prosecution, by warrant of distress against and by sale of the goods and chattels of the offender; or such offender may, in the discretion of the magistrate, whether imprisonment be or be not part of the sentence, be imprisoned for a period not exceeding thirty days, in addition to and after the expiration of any other imprisonment making part of his sentence, unless such fine and all expenses incurred in the prosecution be sooner paid; and all such fines, when collected, shall belong to the party aggrieved by and complaining of the offence, and be paid over to such party." (*Ib.* s. 23.)

TRANSPORTATION.

RETURN FROM.—If any transported or banished person return to the province before the expiration of his term of transportation, he shall be guilty of felony. (See Con. Stats. C. c. 90, s. 34.)

WHERE TO BE TRIED.—The offender returning from transportation may be tried in the city or place where found, or county or place from which formerly banished. (See Con. Stats. C. ch. 99, s. 10.)

EVIDENCE.—A certificate from the officer having the custody of the records where any sentence or order of transportation was made, to be received as evidence of conviction and sentence. (See *ib.* s. 72.)

Offenders formerly punishable by transportation now punishable by imprisonment in the provincial penitentiary. (See *ib.* s. 107.)

VEXATIOUS ACTIONS.

AGAINST JUSTICES OF THE PEACE.—"Every action brought against any Justice of the Peace for any act done by him in the execution of his duty as such Justice, with respect to any matter within his jurisdiction as such Justice, or against any other officer or person fulfilling any public duty for anything by him done in the performance of such public duty, whether any of such duties arise out of the common law or be imposed by act of parliament, either imperial or provincial, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause; and if at the trial of any such action upon the general issue pleaded the plaintiff fails to produce such allegation he shall be nonsuited, or a verdict shall be given to the defendant." (Con. Stat. U. C. c. 126, s. 1.)

WHEN JUSTICE HAS EXCEEDED HIS JURISDICTION.—"For any act done by a Justice of the Peace in a matter of which by law he has not jurisdiction, or in which he has exceeded his

jurisdiction, or for any act done under any conviction or order made or warrant issued by such Justice in any such matter, any person injured thereby may maintain an action against such Justice in the same form and in the same case as he might have done before the passing of this act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause." (*Ib.* s. 2.)

AN ACT DONE UNDER CONVICTION OR ORDER.—"No such action shall be brought for anything done under such conviction or order until the conviction or order has been quashed, either upon appeal or upon application to one of the superior courts of common law for Upper Canada; nor shall any such action be brought for anything done under any warrant issued by such Justice to procure the appearance of the party, and which has been followed by a conviction or order in the same matter, until the conviction or order has been quashed as aforesaid." (*Ib.* s. 3.)

AN ACT DONE UNDER WARRANT.—"If such last-mentioned warrant has not been followed by a conviction or order, or in case it be a warrant upon an information for an alleged indictable offence, if a summons was issued previously to such warrant, and such summons was served upon such person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no action shall be maintained against the Justice for anything done under such warrant." (*Ib.* s. 4.)

IF ONE JUSTICE CONVICT, &C., AND ANOTHER GRANT A WARRANT.—"Where a conviction or order has been made by one or more Justice or Justices of the Peace, and a warrant of distress or commitment has been granted thereon by some other Justice of the Peace *bonâ fide* and without collusion, no action shall be brought against the Justice who granted such warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the Justice or Justices who made the same, but the action (if any be brought) shall be

against the Justice or Justices who made the conviction or order." (*Ib.* s. 5.)

IF A JUSTICE REFUSE TO DO ANY ACT.—"In all cases where a Justice or Justices of the Peace refuse to do any act relating to the duties of his or their office as such Justice or Justices, the party requiring such act to be done may, upon an affidavit of the facts, apply to either of the superior courts of common law in Upper Canada, or to the judge of the county court of the county or united counties in which such Justice or Justices reside, for a rule calling upon such Justice or Justices, and also the party to be affected by such act, to show cause why such act should not be done; and if, after due service of such rule, good cause be not shown against it, the said court may make the same absolute, with or without or upon payment of costs, as may seem meet; and the Justice or Justices, upon being served with such rule absolute, shall obey the same and shall do the act required; and no action or proceeding shall be commenced or prosecuted against such Justices or Justices for having obeyed the rule and done the act required as aforesaid." (*Ib.* s. 6.)

AFTER CONVICTION, &C., AFFIRMED.—"In case a Justice of the Peace has granted a warrant of distress or a warrant of commitment upon any conviction or order which, either before or after the granting of the warrant, has been confirmed upon appeal, no action shall be brought against such Justice by reason of any defect in such conviction or order for anything done under the warrant." (*Ib.* s. 7.)

ACTION BROUGHT CONTRARY TO THIS ACT.—"In case any action be brought where by this act it is enacted that no such action shall be brought under the particular circumstances, a judge of the court in which the action is pending shall, upon application of the defendant and upon an affidavit of facts, set aside the proceedings in such action, with or without costs, as to him seems meet." (*Ib.* s. 8.)

LIMITATION OF ACTIONS.—"No action shall be brought against any Justice of the Peace for anything done by him in the

execution of his office, unless the same be commenced within six months next after the act complained of was committed." (*Ib.* s. 9.)

NOTICE OF ACTION.—"No such action shall be commenced against any Justice of the Peace until one month at least after a notice in writing of the intended action has been delivered to him or left for him at his usual place of abode by the party intending to commence the action, or by his attorney or agent; in which notice the cause of action and the court in which the same is intended to be brought shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and also the name and place of abode or of business of his attorney or agent, if the notice be served by such attorney or agent." (*Ib.* s. 10.)

ACTION NOT TO BE BROUGHT IN THE COUNTY COURT OR DIVISION COURT, IF THE JUSTICE OBJECTS.—"No action shall be brought in any county or division court against a Justice of the Peace for anything done by him in the execution of his office, if the Justice objects thereto; and if within six days after being served with notice of any such action such Justice or his attorney or agent gives a written notice to the plaintiff in the intended action that he objects to being sued in such county or division court for such cause of action, no proceedings shall afterwards be had in such county or division court in any such action, but it shall not be necessary to give another notice of action in order to sue such parties in any other court." (*Ib.* s. 12.)

NON-SUIT.—"If at the trial of any such action, the plaintiff does not prove, 1. That the action was brought within the time hereinbefore limited in that behalf, and 2. That such notice as aforesaid was given one month before the action was commenced, and 3. The cause of action stated in such notice, and 4. Does prove that the cause of action arose in the county or place laid as venue in the margin of the declaration, and 5. When the plaintiff sues in a county or division court, that the cause of action arose within the county or united counties for

which such court is holden, 6. Then and in any such case such plaintiff shall be non-suit, or the jury shall give a verdict for the defendants." (*Ib.* s. 16.)

ACT TO APPLY TO EVERY OFFICER.—"So far as applicable, the whole of this act shall apply for the protection of every officer and person mentioned in the first section hereof, for anything done in the execution of his office, as therein expressed." (*Ib.* s. 20.)

VEXATIOUS INDICTMENTS FOR MISDEMEANORS.—"After the first day of September, one thousand eight hundred and sixty-one, no bill of indictment for any of the offences following, viz: perjury, subordination of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling-house, keeping a disorderly house, and any indecent assault, shall be presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment had been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence, if charged to have been committed in Upper Canada, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law, or of her Majesty's attorney general or solicitor general for Upper Canada, or of a judge of one of the county courts, or recorder of a city in Upper Canada." (24 Vic. c. 10, s. 1.)

"Where any charge or complaint shall be made before any one or more of her Majesty's Justices of the Peace that any person has committed any of the offences aforesaid, within the jurisdiction of such Justice, and such Justice shall refuse to commit or to bail the person charged with such offence to be tried for the same, then, in case the prosecutor shall desire to prefer an indictment respecting the said offence, it shall be lawful for the said Justice, and he is hereby required to take the recognizance of such prosecutor to prosecute the said

charge or complaint, and to transmit such recognizance, information and depositions, if any, in Upper Canada, to the county crown attorney, in accordance with "The Local Crown Attorney's Act," in the same manner as such Justice would have done in case he had committed the person charged to be tried for such offence." (*Ib.* s. 2.)

"In every case after notice as aforesaid, and before action, the Justice may tender to the party aggrieved, or his attorney or agent, such sum of money as he thinks proper, as amends; and after commencement of action, but before issue joined, such defendant may, if he has made no tender, or if he have done so as an addition thereto, pay such sum as he thinks fit, and give the fact of such payment as evidence at the trial under the general issue." (*Ib.* s. 13.)

"If the jury at the trial be of opinion that the plaintiff is not entitled to damages beyond the sum paid, or even so much, a verdict shall be for the defendant, and the money paid to plaintiff, or so much of it as is awarded by the jury." (*Ib.* s. 14.)

"If the plaintiff accepts the money paid into court, he may obtain an order from the judge of the court for the payment of it to him; and such order shall be a bar to another action for the same cause." (*Ib.* s. 15.)

"There will be a non-suit or verdict for the defendant, unless the plaintiff prove at the trial, 1. That the action was brought within the time hereinafter limited; 2. That notice as aforesaid was given before action brought; 3. That the cause of action was stated in such notice; 4. That the cause of action arose in the place stated in the venue; 5. And, when in county or division court, that the cause of action arose in the county or division for which the court is holden." (*Ib.* s. 16.)

"The plaintiff can only recover three cents damages, when the party suffered no greater punishment than the law prescribes for the offence of which he was guilty." (*Ib.* s. 17.)

"If the plaintiff recover a verdict, or defendant allows judgment to pass by default, the plaintiff will be entitled to costs." (*Ib.* s. 18.)

"If malice and want of probable cause be alleged, and the plaintiff recovers, he shall be entitled to full costs; and if any Justice recover as a defendant, he shall recover costs to be taxed as between attorney and client." (*Ib.* s. 19.)

VAGRANTS.

The council of every county, city and town in Upper Canada has the power to pass by-laws under the authority of Con. Stat. U. C. c. 54, sec. 282, sub-sec. 9, "In restraining and punishing vagrants, mendicants and persons found drunk and disorderly in any street, highway or public place."

When called upon to punish a person belonging to either one of the above mentioned three classes of offenders, the Justice should proceed under the by-law of his county, town or city, as the case may be.

In the event of the Justice finding that there is not a by-law under which he can punish the offender, he should then proceed under the authority of the Imperial act 17 Geo. II. c. 5, which gives him ample power. By this act the following persons or classes are deemed rogues and vagabonds:

Every person pretending or professing to tell fortunes, or using any subtle craft, means or device, by palmistry* or otherwise, to deceive or impose on any of her Majesty's subjects.

Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, or not having any visible means of subsistance, and not giving a good account of himself or herself.

Every person wandering abroad and endeavoring, by exposure of wounds or deformities, to obtain or gather alms.

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*Pretending to tell fortunes from the palm of the hand. Since the commencement of the rebellion in the United States many parts of Canada have been very much infested by people of this class, who have no doubt done considerable injury to the weak-minded people who consulted them.

The attention of the constables in the neighbourhood where they pitch their tent or locate should be called to those people.

Every person going about as a gatherer or collector of alms, or endeavoring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence.

Every person running away and leaving his wife or his or her child or children chargeable, or whereby she or they or any of them shall become chargeable, to any parish, township or place.

Every person playing or betting in any road, highway or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance.

Every person having in his or her custody or possession any picklock, bit, or other instrument, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or outbuilding; or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon; or having upon him or her any instrument with intent to commit any felonious act.

Every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any enclosed yard, garden, or area, for any unlawful purpose.

Every suspected person or reputed thief frequenting any river, canal or navigable stream, lock, or basin or quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony.

Every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

IDLE AND DISORDERLY PERSONS.—1. Any petty chapman or pedler, wandering abroad and trading, without being duly licensed or otherwise authorized by law.

2. Every common prostitute, wandering in the public streets or in any place of public resort, and behaving in a riotous or indecent manner.

3. Every person wandering abroad, or placing himself or herself in any public place, street, highway, court or passage, to beg or gather alms, or causing or procuring or encouraging any child so to do.

APPREHENDING ROGUES.—By 17 Geo. II. c. 5, s. 5, the constable finding any one offending as aforesaid, shall apprehend and convey him, or cause him to be conveyed, before a Justice of the Peace, under a penalty of ten shillings ($2 50) for such refusal; and any other person may apprehend and carry him to the constable or to a Justice of the Peace.

PUNISHMENT.—By 17 Geo. II. c. 5, it shall be lawful for one Justice to commit such offenders (being convicted thereof before him, by his own view, or confession, or oath of one witness) to the house of correction, to be kept to hard labour for a term not exceeding one month; and if committed to the sessions, and the Justices at such sessions shall, on examination of the case, adjudge such person to be a rogue or vagabond, or an incorrigible rogue, they may order such rogue or vagabond to be detained or imprisoned in the house of correction for any further time not exceeding two years nor less than six months.

GENERAL PENALTY, &c.—And by 17 Geo. II, c. 5, s. 22, if any constable or other officer or governor of any house of correction shall be defective in his duty, or if any person shall prevent the execution of this act, or shall rescue any person apprehended, or aid therein, he shall, on conviction before one Justice, forfeit a sum not exceeding five pounds (twenty-five dollars) nor less than ten shillings (two dollars and fifty cents), and in default to be imprisoned with hard labour for a period not exceeding two months.

VESSELS—OFFENCES RELATING TO.

"Any person who by force prevents or impedes any person endeavouring to save his life from any ship or vessel in distress, or wrecked, stranded, or cast on shore (whether he be on board of or has quitted the same), shall be guilty of felony, and shall

be imprisoned in the penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (Con. Stat. C. c. 91, s. 31.)

"Any person who assaults and strikes or wounds any magistrate, officer or other person, lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded or cast on shore, or lying under water, shall be guilty of felony, and be imprisoned in the penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years." (*Ib.* s. 32.)

WEAPONS—CARRYING.

CONCEALED OR OTHERWISE.—"Any person who carries about his person any bowie-knife, dagger or dirk, or any weapons called or known as iron knuckles, skull-crackers or slung-shot, or other offensive weapons of a like character, or who secretly carries about the person any instrument loaded at the end, or who sells or exposes for sale, publicly or privately, any such weapon, shall be subject, on conviction, to a fine of not less than ten nor more than forty dollars, and in default of payment thereof to imprisonment for a term not exceeding thirty days, at the discretion of the court wherein the offence is tried; but nothing in this section contained shall apply to her Majesty's army or navy, or militia, or volunteer force, nor to any Highland or national society carrying arms as part of their national costume." (Con. Stat. C. c. 91, s. 9.)

"Any person charged with having committed any offence against the provisions of the last preceding section of this act, may be tried and dealt with in pursuance of the Consolidated Statute of Canada respecting the prompt and summary administration of criminal justice in certain cases." (*Ib.* s. 10.)

"It shall be the duty of the court or magistrate before whom any person is convicted under the two last preceding sections

of this act, to impound the weapon for carrying which such person is convicted, and to cause the same to be destroyed." (*Ib.* s. 11.)

"All prosecutions under the preceding ninth and tenth sections of this act shall be commenced within one month from the offence charged; and from any conviction or decision under the said ninth and tenth sections an appeal shall lie to the Court of General Quarter Sessions of the Peace for the county in Upper Canada, or district in Lower Canada, wherein the same takes place, subject in Upper Canada to the provisions of the Consolidated Statute for Upper Canada respecting appeals in cases of summary conviction, and in Lower Canada to the provisions of law regulating appeals to the Quarter Sessions generally."* (*Ib.* s. 12.)

WEEDS.

PREVENTING GROWTH OF.—"The council of every township, city, town, or incorporated village may pass by-laws for preventing the growth of weeds detrimental to good husbandry." (Con. Stat. U. C. c. 54, s. 266, sub. sec. 10.)

WEIGHTS AND MEASURES—USING UNLAWFUL.

"The following rates shall be the standard weight, and shall in all cases be allowed to be equal to the Winchester bushel, namely—

* When a person is charged before an ordinary Justice of the Peace with an offence under the above statute, it must be borne in mind that he can only entertain the charge; and if he thinks there is sufficient evidence, it is his duty forthwith to remand the defendant for disposal before the recorder or police magistrate of the nearest city. This is evident, as section ten of the act enacts that offences against the provisions of section nine may be tried and dealt with in pursuance of the Consolidated Statute of Canada respecting the prompt and summary administration of criminal justice in certain cases. Referring to Con. Stat. C. c. 105 (see *ante*, p. 453), summary power is only given in Upper Canada to recorders and police magistrates of cities. By section 18 of the latter act (see *ante*, p. 457) a magistrate may entertain a charge, but must send it for disposal to the recorder or police magistrate of the nearest city.

The notice of appeal against a conviction under the above section must be given within three days, and must be served upon the complainant.

Wheat	60 lbs.	Oats	34 lbs.
Indian corn	56 lbs.	Beans	60 lbs.
Rye	56 lbs.	Clover Seed	60 lbs.
Pease	60 lbs.	Timothy Seed	48 lbs.
Barley	48 lbs.	Buckwheat	48 lbs."

(Con. Stat. U. C. c. 58, s. 14.)

PENALTY, IF WEIGHT IS NOT STAMPED WITHIN A CERTAIN TIME.—"Every storekeeper, shopkeeper, miller, distiller, butcher, baker, huckster, or other trading person, and every wharfinger or forwarder in any county or place in Upper Canada, who, two months after the appointment of an inspector therefor, uses any weight or measure which has not been duly stamped according to law, or which may be found light or otherwise unjust, shall on conviction forfeit a sum of not more than twenty nor less than eight dollars; and every such light or unjust weight or measure shall, on being discovered by any inspector, be seized, and on conviction of the person using the same shall be forfeited and broken up by the inspector." (*Ib.* s. 16.)

INSPECTOR MAY ENTER SHOPS.—"Every inspector may, at all reasonable times, enter any shop, store, warehouse, stall, yard, or place whatsoever, within his county or division, where any commodity is bought, sold, or exchanged, weighed, exposed, or kept for sale, or weighed for conveyance or carriage, and there examine all weights, measures, or other weighing machines, and compare and try the same with standard weights and measures provided by law." (*Ib.* s. 17.)

FORFEITURE OF.—"If upon such examination it appears that the said weights or measures, or any or either of them, have not been stamped, or are light or otherwise unjust, the same shall be liable to be seized and forfeited; and the person or persons in whose possession the same are found shall, on conviction, forfeit a sum not exceeding eight dollars for the first and twenty dollars for every subsequent offence." (*Ib.* s. 18.)

FALSE STEELYARDS.—"Any person who has in his possession a steelyard or other weighing machine which, on such examination, is found incorrect or otherwise unjust, or who, when

thereto required, neglects or refuses to produce for such examination all weights, measures, steelyards, or other weighing machines in his possession, or who otherwise obstructs or hinders such examination, shall be liable to a like penalty." (*Ib.* s. 19.)

WHEN PENALTY INCURRED. — "No penalty as aforesaid shall be incurred in any county, division, or locality, until two months at least after a standard of weights and measures has been received by the inspector legally appointed therefor." (*Ib.* s. 20.)

PENALTIES, HOW RECOVERABLE.—"All penalties under this act, together with all reasonable costs, shall be recoverable before any Justice of the Peace, on the oath of the inspector or of any other credible witness, and shall, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, and in default of distress the offender shall be committed to the common gaol of the county wherein the conviction took place for a term not exceeding one month; and all such penalties when recovered shall belong to the crown for the public uses of the province, and shall be paid over to the inspector, and shall by him be accounted for in the same manner as other public moneys coming into his hands by virtue of his office." (*Ib.* s. 21.)

FORGING STAMPS.—"If any person makes, forges or counterfeits, or causes or procures to be made, forged or counterfeited, or knowingly acts or assists in the making, forging or counterfeiting any stamp or mark legally used for the stamping or marking of any weights or measures in any county or place in Upper Canada, he shall be guilty of a misdemeanor, and on being convicted thereof shall be liable, at the discretion of the court, to be fined or imprisoned in the common gaol of the county where the conviction takes place; but such fine shall not exceed eighty dollars, and such imprisonment shall not exceed three months." (*Ib.* s. 22.)

COUNTERFEIT STAMP.—"If any person knowingly sells, alters, disposes of or exposes to sale any weight or measure with such

forged or counterfeit stamp or mark thereon, he shall for every such offence forfeit, on conviction, a sum not exceeding forty dollars nor less than eight dollars, to be recovered under the provisions of the twenty-first section of this act; and all weights and measures with such forged or counterfeit stamps or marks shall be forfeited and broken up by the inspector." (*Ib.* s. 23.)

PENALTY ON INSPECTOR FOR STAMPING, &c.—"If any inspector stamps, brands or marks any weight or measure without having first duly compared and verified the same with and by the standard weights and measures provided by law for that purpose, or is guilty of a breach of any duty imposed upon him by this act, he shall, on conviction, forfeit a sum not exceeding twenty dollars, to be recovered and applied as aforesaid." (*Ib.* s. 24.)

APPEALS.—"Any conviction under this act may be appealed in the manner provided in the act respecting appeals in cases of summary convictions." (*Ib.* s. 27.)

JURISDICTION OF MUNICIPAL COUNCILS.—"The council of every county, city and town may pass by-laws:

1. "For appointing inspectors to regulate weights and measures according to the lawful standard;

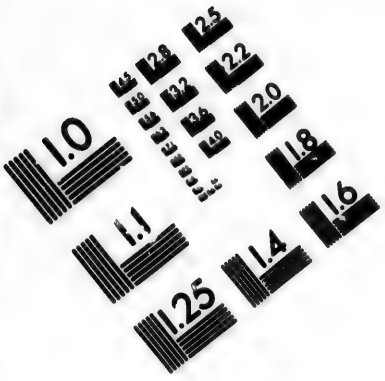
2. "For visiting all places wherein weights and measures, steel-yards, or weighing machines of any description are used;

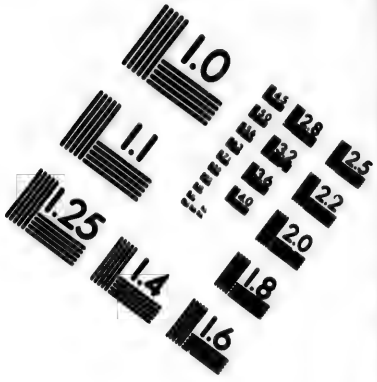
3. "For seizing and destroying such as are not according to the standard:

4. "For imposing and collecting penalties upon persons who are found in possession of unstamped or unjust weights, measures, steel-yards or other weighing machines." (Con. Stat. U. C. c. 54, s. 281.)

WOLVES.

DESTROYING OF.—"If any person produces the head of a wolf with the ears on, before any Justice of the Peace acting for any county in Upper Canada, and makes oath or affirmation (*as the case may be*), or otherwise proves to the





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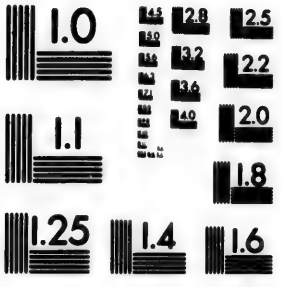

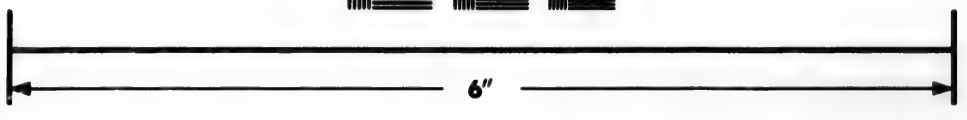

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satisfaction of such Justice that the wolf was killed within that county, or within one mile of an actual settlement in the county, he shall be entitled to receive from the treasurer of the county the sum of six dollars as a bounty for the same."* (Con. Stat. U. C. c. 60, s. 1.)

CERTIFICATE.—"In case the Justices of the Peace before whom the head of the wolf is produced be satisfied of the fact that the wolf was killed as in the preceding section mentioned, he shall first cut off the ears thereof, and then give the person a certificate that the fact of the wolf having been killed, as in the last section mentioned, has been proved to his satisfaction, and such certificate shall authorize the person holding the same to demand and receive from the treasurer of the county the said bounty of six dollars." (*Ib.* s. 2.)

WHEN TREASURER TO PAY.—"The treasurer of the county shall forthwith pay such bounty to the person presenting the certificate, provided the county funds in his hands enable him so to do; and if the said funds do not so enable him, then the treasurer shall pay the same out of the moneys of the county which next thereafter come into his hands." (*Ib.* s. 3.)

OTHER EXPENSES TO BE FIRST PAID.—"The treasurer of a county shall not pay the bounty to which any such certificate entitles the person presenting the same until he has paid the annual expenses of the county arising from the building of a court-house and gaol, and keeping the same in repair, the fees of the clerk of the peace, the salary of the gaoler, and the maintenance of the prisoners." (*Ib.* s. 4.)

IF NOT PAID BY TREASURER.—"When the funds of any county do not enable the treasurer thereof to pay the bounty, the certificate therefor shall be received by the treasurer of any municipality in the said county for the amount in certificate specified, for and towards the discharge of any county rate to be collected from any person within the county." (*Ib.* s. 5.)

* The oath made by or on behalf of the party producing the head should be in writing, and signed by the party who makes it. It should state the said head to be the head of a wolf, and when and where and by whom killed. Though not strictly necessary, it might be as well for the Justice to write the certificate upon the back of the paper containing the oath, and thereby cause the oath to be preserved among the county papers.

ADDENDA.

ABSCONDING DEBTORS.

A Justice of the Peace is in certain cases empowered to issue an attachment against absconding debtors.

In case any person being indebted in a sum not exceeding one hundred dollars nor less than four dollars, for any debt or damages arising upon any contract, express or implied, or upon any payment—

1. Absconds from this province, leaving personal property liable to seizure under execution for debt in any county in Upper Canada; or,

2. Attempts to remove such personal property either out of Upper Canada or from one county to another therein; or,

3. Keeps concealed in any county of Upper Canada to avoid service of process; and in case any creditor of such person, his servant, or agent, makes and produces an affidavit* or affirmation to the purport of the form prescribed by any rule respecting the practice and proceedings of the division courts, a writ of attachment may be issued. (Con. Stat. U. C. c. 19, s. 199.)

WHEN JUSTICE MAY ISSUE ATTACHMENTS.—"The Judge, or a Justice of the Peace for the county, may take the affidavit in

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* AFFIDAVIT OF ATTACHMENT.

PROVINCE OF CANADA, ——— ———, TO WIT: } ——— of the ———, in the ———, maketh oath and saith, that ——— justly and truly indebted to him the said ———, in the sum of ——— of lawful money of Canada, for ———. And this deponent further saith, that he hath good reason to believe and verily doth believe, that the said ———. And this deponent further saith that this affidavit is not made, nor the process thereon to be issued from any vexatious or malicious motive whatever.

Sworn before me the ——— day of ———, one thousand eight hundred and ———.

J. P.

[*or Clerk of the* ——— *Division Court of the* ———].

the last preceding section mentioned, and upon the same being filed with such Judge or Justice, the Judge or Justice may issue a warrant under his hand and seal in the form (C.)* and such Judge or Justice shall forthwith transmit the affidavit to the clerk of the division court within whose division the same was made or taken to be filed, by him filed and kept among the papers in the cause." (*Ib.* s. 200.)

ALIENS.

AN ALIEN, generally speaking, is one born in a foreign country out of the dominions or allegiance of the crown of England. An *alien* residing in Canada may become entitled to be naturalized after residing three years in the province and taking the oath of allegiance. The following oaths of "residence" and "allegiance" are to be taken before a magistrate residing in the city, town, parish, village, or township in which said alien may reside. (Con. Stat. C. c. 8, s. 2.)

"OATH OF RESIDENCE.

"I, A. B., do swear (*or, being one of the persons allowed by law to affirm in judicial cases*, do affirm) that I have resided three years in this province, with intent to settle therein, without having been, during that time, a stated resident in any foreign country. So help me God."

Every such alien, being a male, in order to become entitled to the benefit of the act, must take and subscribe the following

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*(C.) WARRANT OF ATTACHMENT.

PROVINCE OF CANADA, } *To* —— *Bailiff of the* —— *Division Court of the*
—— —— } *County of* ——.
TO WIT: } You are hereby commanded to attach, seize, take, and safely keep all the personal estate and effects of ——, an absconding, removing, or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the said ——, or a sufficient portion thereof to secure —— for the sum of ——, together with the costs of his suit thereupon, and to return this warrant with what you shall have taken thereupon to the clerk of the said —— division court of the —— aforesaid forthwith; and herein fail not.

Witness my hand and seal the —— day of ——, one thousand eight hundred and ——.

J. P.
[*or Clerk of Division Court.*]

oath of allegiance (*or, being one of those who are allowed by law to affirm in judicial cases, shall make affirmation to the same effect*), that is to say:

"OATH OF ALLEGIANCE.

I, A. B., do sincerely promise and swear (*or, being one of the persons allowed by law in judicial cases*, do affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Province of Canada, dependent on and belonging to the said United Kingdom; and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against her person, crown, and dignity; and that I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them; and all this I do swear, without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or persons whatever to the contrary. So help me God."

The Justice before whom the said oaths are taken is required to give the alien a certificate of residence, setting forth that the alien has taken and subscribed the oaths, and that the Justice has reason to believe that the alien had been resident in Canada for a period of three years or upwards.

The certificate may be in the following form:

CERTIFICATE OF RESIDENCE.

CANADA, County of ——, TO WIT: } I, C. D., of the township of ——, in the county of ——, in the province of Canada, Esquire, do hereby certify as follows:

1st. That A. B. in the (within *or* annexed) oaths named, took and subscribed the oath of residence and also the oath of allegiance hereto annexed respectively before me.

2nd. That the said A. B. has, as I have reason to believe and do believe, been resident within the province of Canada for a period of three years or upwards.

3rd. That the said A. B. is a person of good character, and that there does not exist to my knowledge any reason why the said A. B. should not be granted all the rights and capacities of a natural-born British subject.

4th. That I am a Justice of the Peace (mayor, alderman, *or as the case may be*,) in the county of ——.

Dated this —— day of ——, 18—.

J. P. (*or as case may be.*)

CERTIFICATE TO BE FILED, &C.—The oaths and certificate should be forwarded to the office of the clerk of the peace or clerk of the recorder's court, within the jurisdiction of which

the alien resides, and by him openly read in court on the first day of the next general sitting of the court.

If the facts stated in the certificate given by the Justice are not controverted, or some valid objection made to the naturalization of the alien, the court will on the last day of the sitting direct that the certificate of residence be filed of record in the said court, "and thereupon such alien shall be thereby admitted and confirmed in all the rights and privileges of British birth, to all intents whatever, as if he or she had been born within this province." (*Ib.* s. 3.)

CERTIFICATE OF NATURALIZATION.—"Every such person shall be then entitled to receive a certificate of naturalization under the seal of such court, and the signature of the clerk thereof, that he or she hath complied with the several requirements of this act, which certificate of naturalization may be in the following form, or to the like effect, that is to say:

"CERTIFICATE OF NATURALIZATION.

PROVINCE OF CANADA, Circuit (*or*, county or city) of ——, TO WIT: } In the Court of ——.

Whereas A. B., of, &c. (*describing him or her as formerly of such a place, in such a foreign country, and now of such a place in this province, and adding his or her addition*), hath complied with the several requirements of the "Act respecting the Naturalization of Aliens," and the certificate thereof hath been read in open court, and thereupon, by order of the said court, duly filed of record in the same, pursuant to the said act: These are therefore to certify to all whom it may concern, that under and by virtue of the said act, the said A. B. hath obtained all the rights and capacities of a natural-born British subject within this province, to have, hold, possess, and enjoy the same within the limits thereof, upon, from, and after the —— day of ——, in the year of our Lord one thousand eight hundred and ——; and this certificate thereof is hereby granted to the said A. B. according to the form of the said law.

Given under my hand and the seal of the said court, this —— day of —— (*the day of filing the certificate of residence*), in the year of our Lord one thousand eight hundred and ——.

(Signature,) C. D.,
Clerk of the Peace,

(or, *Clerk of the Recorder's Court*, or *Clerk of the Circuit Court*, as the case may be).

"The Justice who administers the oaths and grants the certificate can charge twenty-five cents therefor; and for reading

and filing certificate of residence and preparing and issuing certificate of investigation, the clerk of the peace is entitled to receive twenty-five cents." (*Ib.* s. 8.)

QUALIFICATION OF JUSTICES.

"All Justices of the Peace appointed in the several districts and counties of this province shall be of the most sufficient persons dwelling in the districts and counties respectively." (Con. Stat. C. c. 100, s. 1.)

PROPERTY QUALIFICATION.—"When not otherwise provided by law, no person shall be a Justice of the Peace, to act as such within any district or county of this province, who has not in his actual possession to and for his own proper use and benefit a real estate either in free and common soccage, or *en fief* or *en rôlure* or *en franc allen*, in absolute property or for life, or by *emphteose*, or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufructuary possession for his life, in lands, tenements, or other immovable property lying and being in this province of or above the value of one thousand two hundred dollars over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of or affecting the same; or who, before he takes upon himself to act as a Justice of the Peace, does not take and subscribe the oath following before some Justice of the Peace for the district or county for which he intends to act, that is to say:

"I, A. B., do swear that I truly and *bona fide* have to and for my own proper use and benefit such an estate (*specifying the same by its local description, rents, or anything else*), as doth qualify me to act as a Justice of the Peace for the district or county of ——, according to the true intent and meaning of the act respecting the qualification of Justices of the Peace (*nature of such estate, whether land, and if land, designating*); and that the same is lying and being (*or, issuing out of lands, tenements, and hereditaments situate*) within the township (*parish or seigniority*) of —— (*or, in the several townships, parishes, or seigniories of ——, as the case may be*). So help me God." (*Ib.* s. 3)

CERTIFICATE OF OATH.—"A certificate of such oath having been taken and subscribed as aforesaid, shall be forthwith

deposited by the Justice of the Peace who has taken the same at the office of the clerk of the peace in the district or county, and shall by the said clerk be filed among the records of the sessions of the said district." (*Ib.* s. 4.)

PENALTY ON JUSTICES. — "When not otherwise provided, any person who acts as a Justice of the Peace in and for any district or county in this province, without having taken and subscribed the aforesaid oath, or without being qualified according to the true intent and meaning of this act, shall for every such offence forfeit the sum of one hundred dollars, one moiety to her Majesty and the other moiety to such person as will sue for the same, to be recovered, together with full costs of suit, by civil action or by information, in any court having competent jurisdiction in the district or county wherein the offence has been committed; and in every such action, suit or information, the proof of his qualification shall be upon the person against whom the suit is brought." (*Ib.* s. 6.)

LIMITATION OF ACTIONS.—"Every action, suit or information given by this act shall be commenced within the space of six months next after the fact committed." (*Ib.* s. 15.)

FINES AND PENALTIES TO BE PAID TO RECEIVER GENERAL.— "The fines and penalties incurred and payable to her Majesty by virtue of this act, shall be paid into the hands of the Receiver General for the public uses of the province." (*Ib.* s. 19.)

COUNTY CROWN ATTORNEY.

TO EXAMINE INFORMATIONS. — "Receive and examine all informations, examinations, depositions, recognizances, inquisitions and papers connected with criminal charges, which the magistrates and coroners of the county are hereby required to transmit to him — and when necessary, he shall cause such charges to be further investigated, and additional evidence to be collected if required,—and shall also sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions at the assizes and quarter sessions

may not be unnecessarily delayed or fail through want of proof that might be secured." (Con. Stat. U. C. c. 106, s. 1.)

To CONDUCT BUSINESS AT SESSIONS.—"He shall institute and conduct on the part of the crown prosecutions for felonies and misdemeanors at the court of Quarter Sessions for the county he is appointed to, in the same manner as the law officers of the crown institute and conduct similar prosecutions at the assizes, and with like rights and privileges, except as to the right of entering a *nolle prosequi;* and generally he shall attend to all criminal business at the court of Quarter Sessions, and perform also the like duties in the recorder's court in those cities wherein such courts exist." (*Ib.* sub-sec. 2.)

To WATCH BUSINESS.—"He shall watch over the conduct of cases at the court of Quarter Sessions, wherein it is questionable if the conduct complained of be punishable by law, or where the particular act or omission presents more of the features of a private injury than a public offence; and without unnecessarily interfering with private individuals who wish in such cases to prosecute, may assume wholly the conduct of the case where justice towards the accused seems to demand his interposition." (*Ib.* sub-sec. 3.)

To DELIVER PAPERS.—"He shall deliver to the crown officer or counsel appointed by the attorney general all papers connected with the criminal business at the assizes, on or before the opening of the court; he shall be present at such court, and, if required, shall assist such crown officer or counsel with the criminal business; and in the absence of the law officers of the crown and of such counsel, he shall represent the crown and take the charge and conduct of the criminal business to be done at the assizes for his county." (*Ib.* sub-sec. 4.)

To CONDUCT PROCEEDINGS BEFORE MAGISTRATES.—"If required by the general regulations touching his office to be made in pursuance of the provisions hereinafter contained, he shall institute and conduct proceedings before Justices of the Peace under any act or law conferring summary powers to convict for offences in relation to the public revenue, the public property, the public domain, the public peace, the public health,

and any other matter made punishable on summary conviction before Justices of the Peace; and the county attorney is hereby empowered to institute such proceedings, on a complaint in writing, or as public prosecutor, in cases wherein the public interests require the exercise of such office." (*Ib.* sub-sec. 5.)

To ADVISE MAGISTRATES.—"If by any Justice of the Peace requested in writing containing a statement of the particular case, he shall advise and instruct such magistrate in respect to criminal offences brought before him for preliminary investigation or for adjudication."* (*Ib.* sub-sec. 6.)

"He shall perform all such duties and services as the governor, by regulations in council from time to time, prescribes and directs for carrying out the provisions of any act imposing duties upon county attorneys, and also touching the office of county attorneys and the prosecution of criminal offenders." (*Ib.* sub-sec. 7.)

COSTS ALLOWED HIM.—"In every case of misdemeanor tried at the court of Quarter Sessions, in which costs are or may be ordered to be paid by a defendant, the county attorney shall be entitled to fees as attorney and counsel for services rendered in such case, to be taxed by the court according to the scale of allowance in the county courts, as nearly as the nature of such services will allow: such fees, in case of conviction, to form part of the costs payable by a defendant." (*Ib.* s. 2, sub-sec. 3.)

"In all cases of felony tried as aforesaid, and in all cases of misdemeanor, in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the defendant, the county attorney shall be entitled to receive for the services rendered by him in each such case the sum of five dollars, to be paid upon certificate of the chairman of the court of Quarter

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* The Justice should not fail to give the county crown attorney a full statement in writing of the case upon which advice is asked. In many cases the better course is to send the information and depositions, if any.

As the qustions which sometimes arise before the Justice are new and complicated, he should adjourn the case for several days, so as to give the crown attorney sufficient time to answer, and should inform him of the time to which the case has been adjourned, so that he may be present if the case is one requiring his presence under the fifth sub-section above quoted.

Sessions, and to form a portion of the expenses of the administration of criminal justice in Upper Canada."* (*Ib.* s. 4.)

CASE OF ILLNESS PROVIDED FOR.—"In case of the illness or unavoidable absence of the county attorney, the judge of the county court of the county may appoint some barrister at law to act for such county attorney during such illness or absence, and notice of the appointment and of the cause thereof shall be sent by such county attorney to the governor, who may at any time annul such appointment." (*Ib.* s. 8.)

JUSTICES AND CORONERS TO DELIVER PAPERS TO.—"In every case where a person is committed for trial, or bailed to answer to a criminal charge, the Justice of the Peace so committing or bailing shall deliver or cause to be delivered without delay to the county attorney for the county, the informations, depositions, examinations, recognizances and papers connected with the charge; and the county attorney shall be deemed the 'proper officer' of the courts within the meaning of the Consolidated Statute of Canada *respecting the duties of Justices of the Peace out of sessions, in relation to persons charged with indictable offences*; and in every case of inquisition found before coroners, the inquisition and every recognizance taken before them, with the written information (if any) and the depositions and statements (if any) of the accused, shall be forthwith delivered to the county attorney of the county in which such inquisition has been found; and in every case in which an information has been laid or complaint made before a Justice of the Peace, whether proceedings have been taken therein or not, such Justice shall hand over to the county attorney all papers connected therewith, on being by him requested so to do." (*Ib.* s. 9.)

FOREIGN ENLISTMENT.

The very large number of persons to be tried for this crime, and the fact that they could only be tried under the Imperial

* In all cases in which the court orders the defendant to pay costs, the costs so to be paid should be taxed or fixed by the court at some certain sum before sentence is pronounced, otherwise they cannot be ordered to be paid by defendant.

act before one of the superior courts, induced the legislature at its last session to amend the law and make the following enactment:

"If any person whatever in this province shall hire, retain, engage or procure, or shall attempt or endeavor to hire, retain, engage or procure, any natural-born subject of her Majesty, person or persons whatever, to enlist or to enter or engage to enlist, or to serve or to be employed, in any warlike or military operation in the service of, or for, or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of a province or people, either as an officer, soldier, sailor or marine, or in any other military or warlike capacity,—or to commit any other offence whatever against the provisions of the second section of the act of the parliament of the United Kingdom, passed in the fifty-ninth year of the reign of King George the Third, chapter sixty-nine, and intituled: 'An Act to prevent the enlistment or engagement of his Majesty's subjects to serve in foreign service, and the fitting out or equipping, in his Majesty's dominions, vessels for warlike purposes without his Majesty's license;' such offender may be prosecuted either in the manner provided by the said act, or in a summary manner before any judge of the superior court for Lower Canada, or any judge of either of the superior courts of common law for Upper Canada, or any judge of a county court, recorder, judge of the sessions of the peace or police magistrate, or before any two Justices of the Peace for the district or county where the offence shall have been committed, and if convicted of such offence on the oath of one or more credible witness or witnesses, may be condemned to pay a penalty of two hundred dollars with costs, and may be committed to the common gaol of the district, county or city for a period not exceeding six months at hard labour, and if such penalty and costs be not forthwith paid, then for such further time as the same may remain unpaid; and such penalty shall belong, one-half to the prosecutor and

one-half to her Majesty for the public uses of the province." (28 Vic. c. 2, s. 1.)

"No prosecution shall be commenced by virtue of this act more than one year after the commission of the offence." (*Ib.* s. 2.)

NOTE.

This act was assented to and became law on the 18th of March, 1865.

Upon perusal of the above act in connection with the second section of the imperial act (*ante* pages 273–75), it will be observed that the legislature of Canada has given to the Justices summary jurisdiction to try and dispose of only those cases which may be prosecuted under the last clause of the said section, beginning, *ante*, on the seventh line from the bottom of the 274th page: that is to say, the Justices can summarily try persons who procure or attempt to procure others to enter foreign service, but not those who themselves enter the foreign service.

Great care should be taken by the Justices in filling up the information, taking down the depositions, and drawing up the conviction and warrant of commitment, in cases which come before them, either under the above or the imperial act. The absence of the witness may make it necessary at the trial in the superior court to use as evidence depositions taken before the Justices, and therefore the depositions should contain all the evidence the witness gives, either on examination in chief or on cross-examination, and should be taken down in the words of the witness as near as can be.

When the charge is for unlawfully endeavoring to procure a person to go from Canada to a foreign country for the purpose of being enlisted, &c., it is not necessary that the intention of the prisoner should be known to the person he intends to cause to be enlisted, and the intent may be established by other evidence.

It is frequently the case that several persons join in the unlawful attempts and acts intended to be punished under this act, and in such cases, where the Justices proceed summarily, each of the parties convicted must be fined two hundred dollars.

It is also sometimes the case that an attempt is made to take from Canada several persons at the same time. The person or persons who do this may be proceeded against in a separate and distinct case for the attempt made in connection with each of said persons.

If several persons are tried and convicted at the same time for the same offence, the whole amount of costs should be divided as the Justice may deem advisable, and the amount to be paid by each person should be particularly stated.

If the Justices see fit, they may direct one party to pay one cent or other small amount, and the other the balance of the costs.

The Justices have not power to issue a warrant of distress for either penalty or costs to be paid under the authority of this act.

In cases where the Justices intend to proceed summarily, they should have the following facts appear:

1st. That the offence mentioned in the information, conviction and committal, was committed after the 18th March, 1865, and within a year next before the commencement of the prosecution.

2nd. That the offence was committed in the county in which the Justices have jurisdiction.

3rd. That the offence is sufficiently and correctly described in the conviction and committal.

4th. That the conviction was upon the oath of a credible witness or witnesses, giving the name, addition and address of each witness.

5th. That if convicted, the penalty is to be paid by each one convicted is $200.

6th. That the costs to be paid by each person so convicted is stated at some certain amount.

7th. That the prisoner is committed to prison at hard labour for some period not exceeding six months, as it would appear that a conviction without imprisonment would be bad.

The Justices will observe from the following judgment of His Lordship the Chief Justice of Upper Canada, which we quote at length, the precision necessary in convictions and committals:—

"THE QUEEN, *vs.* JAMES WRIGHT. } "This case comes before me on a return to a writ of *Habeas corpus*, the prisoner's presence being dispensed with at his own request.

"The return shews that the prisoner is in custody on four warrants. The first, dated twenty-eighth day of March, one thousand eight hundred and sixty-five, at Chatham, in the county of Kent, recites, that the prisoner was on that day 'charged before F. M., Esquire, police magistrate, and one of the Justices of the Peace in and for the said county of Kent, for that he on the twenty-second day of March last, at Chatham, did attempt to procure Thomas Liomgood to serve in a warlike or military operation in the service of the government of the United States of America, for which offence he was on the twenty-eighth day of March convicted before me, the said police magistrate, and condemned to pay a penalty of one hundred dollars, and in default of payment forthwith to be committed to the common gaol of the county until paid,' and that the prisoner has not paid, &c., and directs him to be taken and conveyed to the gaol, there to be kept until he shall pay the said penalty, together with the costs of this 'comment,' or to be 'thence delivered by due course of law.'

"The second is dated thirtieth day of March, one thousand eight hundred and sixty-five, at Chatham, in the county of Kent, aforesaid. The magistrate is described as in the first warrant, and the offence is set out in terms precisely similar except that the name John J. Aussell is introduced in place of Thomas Liomgood. The adjudication is, that the prisoner pay a penalty of one hundred dollars and costs forthwith, and be imprisoned at hard labour in the common gaol for a period of six months, and in default of payment of the penalty and costs forthwith for such further time as the same remains unpaid, and the committal is at hard labour for a period of six months, and for such other time as the said penalty and costs remain unpaid, also the charges of the commitment and conveyance to gaol.

"The third is dated the twenty-eighth of March, in the year of our Lord one thousand eight hundred and sixty-five, and is like the first, correcting the word 'comment' by substituting 'commitment.' In the margin of this warrant is the following memorandum or entry:

Fine	One hundred dollars.
Information and warrant	Fifty cents.
Hearing case	Fifty cents.
Return of conviction	One dollar.
Arrest and attendance by constable	Two dollars.
One witness	Fifty cents.
Commitment	Twenty-five cents.
Conveying to gaol	One dollar.
	One hundred and five dollars seventy-five cents.

"The fourth is dated thirtieth of March, one thousand eight hundred and sixty-five, and is like the second, but contains a marginal entry or memorandum like that on the third warrant.

"The statute 28 Vic., chap. 281, enacts, 'if any person whatever in this province shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, engage, or procure any natural-born subject of Her Majesty, person or persons whatever, to enlist or to serve, or engage to enlist or to serve, or to be employed in any warlike or military operation in the service of, or for, or under, or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the power of government in or over any foreign country, colony, province, or part of a province or people, either as an officer, soldier, sailor, or mariner, or in any other military or warlike capacity, or (the other definition of offence not bearing on this case) such offender may be prosecuted either in the manner provided in the 59 Geo. III. chap. 69 (the Foreign Enlistment Act), or in a summary way before (among others) any Judge of either of the superior courts of common law for Upper Canada, or any Judge of a County Court, Recorder, Judge of the Sessions of the Peace, or Police Magistrate, or before any two Justices of the Peace for the district or county where the offence shall have been committed, and if convicted on the oath of one or more credible witness or witnesses may be condemned to pay a penalty of two hundred dollars with costs, and may be committed to the common gaol of the district, county, or city, for a period not exceeding six months at hard labour; and if such penalty and costs be not forthwith paid, then for such further time as the same may remain unpaid, and such penalty shall belong one half to the prosecutor and one half to Her Majesty for the public uses of the province.'

"It is objected, first, that it does not appear for what place the convicting magistrate is police magistrate. Each warrant has in the margin these words: Province of Canada, County of Kent, to wit; and is dated at Chatham, in the county of Kent; but there is a township of Chatham as well as a town of Chatham in that county, and, *non constat*, the magistrate was a police magistrate for the town, nor that he was exercising jurisdiction within the town.

"Second. That the offence is not sufficiently described according to the statute, which prohibits the hiring, retaining, &c., of any person to enlist or to serve in any warlike or military operation for any foreign prince, &c., 'as an officer, soldier, sailor, or mariner, or in any other military or warlike capacity:' the latter words are not set out as part of the prisoner's offence.

"Third. The penalty is not discretionary in amount. The statute fixes it at two hundred dollars peremptorily: adjudication is for a fine or penalty of only one hundred dollars.

"Fourth. The amount of costs is not stated in the body of the commitment, nor in the recital of the conviction.

"I incline to hold that each of these objections is fatal, though as to the fact it may be said that a general and not a local jurisdiction is given by the letter of the statute to the Judges of the county courts, recorders, Judges of the Sessions of the Peace, and police magistrates; and that it is only when two Justices of the Peace are acting that they must be Justices of the county where the offence is committed. For the purposes of this case, it is not necessary to determine this point.

"The second objection is clearly fatal, for the offence is not simply hiring, &c., any person to enlist or serve in any warlike or military operation for a foreign power, but hiring, &c., such person to enlist as an officer, soldier, &c., the statutory definition is only half followed, and the prisoner is convicted of part and not the whole of what the statute declares to be punishable.

"The third objection is clearly fatal. A judgment for too little is as bad as a judgment for too much. (*Reg.* v. *Salomons*, T. R. 52. See also *Whitehead* v. *Reg.* in error, 7 Q. B. 582, where a sentence of seven years' transportation was passed on a conviction for an offence punishable by statute by transportation for not more than fifteen nor less than ten years.

"The fourth objection is supported by Lord Mansfield's judgment in *Rex* v. *Hare*, Con. 60.

"In my opinion, the prisoner is entitled to his discharge."

INFORMATION.

PROVINCE OF CANADA, the County of ——, (*or as the case may be*) TO WIT. } The information and complaint of C. D., of —— [*yeoman*], taken this —— day of ——, in the year of our Lord one thousand eight hundred and ——, before the undersigned, two of Her Majesty's Justices of the Peace in and for the said county (*or as the case may be*) of ——, who saith that E. F. on or about the —— day of ——, in the year of our Lord one thousand eight hundred and sixty ——, at the township of —— (*or as the case may be*), in the county of ——, *unlawfully did procure him the said C. D.* (or as the case may be) *to enlist as a soldier in the land service** (as the case may be) of a certain foreign state,

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* If the facts do not justify the charge as stated in the italics above, the Justices will in place thereof insert such one of the following charges as can be supported:

2. "Unlawfully did procure one C. D. [*or*, this complainant, C. D.] to go from the Province of Canada to a foreign state, to wit, the United States of America,

to wit, the United States of America, to serve for and under and in aid of the said the United States of America, in the warlike and military operations of the said the United States of America, against the form of the statute in such case made and provided.

Sworn before us, the day and year first above mentioned, at ——.

CONVICTION.

PROVINCE OF CANADA, County of ——, (*or as the case may be*) TO WIT. } Be it remembered, That on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at ——, in the said county (*as the case may be*), E. F. is upon the oath of, L. M. of ——, farmer (*or as the case may be*), a credible witness, convicted before the undersigned two of Her Majesty's Justices of the Peace for the said county (*or as the case may be*), in a case in which the prosecution was commenced on the —— day of —— instant (*or as the case may be*), by one J. H., the prosecutor, for that he the said E. F. on the —— day of —— last past (*or as the case may be*), at the township of ——, in the county of —— (*or as the case may be*), unlawfully did [*here state the offence as proved*] as a soldier in the land service of a certain foreign state, to wit, the United States of America, to serve for and under and in aid of the said the United States of America in the warlike and military operations of the said the United States of America; and we adjudge the said E. F. for his said offence to forfeit and forthwith pay a penalty of —— dollars of lawful money of Canada, to be paid and applied according to law. And also to forthwith pay the sum of —— dollars as the costs of this prosecution. And we also adjudge that the said E. F. be imprisoned in the common gaol of the said county of —— (*or as the case may be*), at ——, in the said county of ——, and there to be kept at hard labour for the space of —— months. And if the said penalty and costs be not forthwith paid, then the said E. F. is to be imprisoned after the expiration of the said —— months for such further time as the said penalty and costs may remain unpaid.

Given under our hands and seals, the day and year first above mentioned, at ——, in the county of —— aforesaid.

COMMITMENT.

PROVINCE OF CANADA, the County, &c., (*as the case may be*), TO WIT. } *To all or any of the constables and other peace officers in the said county* (as the case may be), *of* ——, *and to the keeper of the common gaol of the said county* (or, as the case may be), *of* ——, *at* ——, *in the said county of* ——.

WHEREAS, E. F., late of ——, was this day convicted upon the oath of L. M., of ——, farmer (*or as the case may be*), a credible witness, before the

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for the purpose of him the said C. D. being enlisted as a soldier in," (*same as in first case.*)

3. "Unlawfully did endeavour to procure C. D. to enlist as a soldier in," (*same as in first case.*)

4. "Unlawfully did endeavour to procure the said C. D. to go from the Province of Canada to a foreign state, to wit, the United States of America, for the purpose of him the said C. D. being enlisted as a soldier in," (*same as in first case.*)

undersigned, two of Her Majesty's Justices of the Peace in and for the county (*or as the case may be*) of ——, for that he the said E. F. heretofore, to wit, on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the —— of ——, in the county of —— aforesaid, unlawfully did (*stating the offence as in the conviction*), and it was thereby adjudged that the said E. F. for his offence should forfeit and forthwith pay a penalty of two hundred dollars of lawful money of Canada, to be paid and applied according to law; and that he the said E. F. should also pay —— dollars for the costs of the prosecution in that behalf. And it was thereby further adjudged, that the said E. F. should be imprisoned in the common gaol of the said county of —— (*or as the case may be*), at ——, in the said county of ——, and there be kept at hard labour for the space of —— months. And it was further adjudged, that if the said penalty and costs should not be paid forthwith, the said E. F. should be further imprisoned in the gaol aforesaid for such further time as the said penalty and costs should remain unpaid. And whereas the time in and by the said conviction for the payment of the said several sums hath elapsed, but the said E. F. hath not paid the same, but hath therein made default. These are therefore to command you the said constables or peace officers, or any of you, to take the said E. F., and him safely to convey to the common gaol at —— aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, there to imprison and keep him at hard labour for the space of —— months (*or as the case be*), and also that you there further imprison him for such further time as the said penalty and costs remain unpaid.

Given under our hands and seals, this —— day of ——, in the year of our Lord one thousand eight hundred and ——, at ——, in the said county of —— aforesaid.

MASTERS AND SERVANTS—OFFENCES BY.

VOLUNTARY CONTRACT.—"No voluntary contract of service or indentures entered into by any parties within Upper Canada shall be binding on them, or either of them, for a longer time than nine years from the day of the date of such contract." (Con. Stat. U. C. c. 75, s. 2.)

VERBAL OR WRITTEN AGREEMENTS.—"All agreements or bargains, verbal or written, between masters and journeymen or skilled labourers, in any trade, calling, or craft, or between masters and servants or labourers, for the performance of any duties or service of whatsoever nature, shall, whether the performance has been entered upon or not, be binding on each

party for the due fulfilment thereof; but a verbal agreement shall not exceed the term of one year."* (*Ib.* s. 3.)

PERSONS LEAVING EMPLOYMENT.—"If after any such agreement has been entered into, and during the period of such engagement, whether such employment has been commenced or not, the person who thereby undertook to perform any service or work refuses to go to work, or (without permission or discharge) leaves the employ of the party whom he has engaged to serve, or refuses to obey the lawful commands of the person under whose direction such services are to be performed, or neglects the service, or injures the property of his employer, the offender shall (upon the complaint of such employer, or any person in charge under him) be liable to punishment for such offence as hereinafter provided." (*Ib.* s. 4.)

LIMIT OF FINES OR IMPRISONMENT.—"No Justice or Justices shall impose any fine exceeding twenty dollars, and no imprisonment shall exceed one month nor less than one day." (*Ib.* s. 9.)

COMMITMENT IN DEFAULT.—"In every case of a summary conviction under this act, where the sum forfeited or imposed as a penalty by the Justice is not paid either immediately after the conviction or within the period appointed, the Justice may commit the offender to gaol, there to be imprisoned for the time limited by such conviction." (*Ib.* s. 10.)

WHERE TRIAL MAY TAKE PLACE.—"Any person offending against the preceding provisions of this act may be prosecuted,

* Whenever a Justice is called upon to take a complaint under this clause, he should satisfy himself that the agreement exists between a master and a person belonging to one of the four classes above described, namely, journeymen or skilled labourers who belong to some particular trade or calling, or servants or labourers.

It was lately decided in the sessions of York and Peel, that proceedings could not be taken before a Justice to recover the amount agreed to be paid for a day's work with a threshing-machine, because the owner of the machine did not belong to any trade, calling, or craft, and could not be considered a servant or labourer. (*Wood* v. *Peterman*, ses. 1864.)

Perhaps the best test as to whether the relation of master and servant or labourer exists, is to ask as to whether or not the employer can cause the person doing the work to leave one description of work and attend to or perform another.

convicted, and punished in any county in which he may be found, and the offence shall be deemed to have been committed in such county, whether such county be or be not that in which his employer resides, or in which the contract of service was entered into." (*Ib.* s. 11.)

NON-PAYMENT OF WAGES.—"Any one or more of such Justices, upon the oath of any such servant or labourer against his master or employer, concerning any misusage, refusal of necessary provisions, cruelty, ill-treatment, or non-payment of wages, may summon such master or employer to appear before him or them at a reasonable time to be stated in the summons; and he or they or some other Justice or Justices shall, upon proof on oath of the personal service of such summons, examine into the matter of the complaint, whether the master or employer appears or not, and upon due proof of the cause of the complaint, the Justice or Justices may discharge such servant or labourer from the service or employment of such master, and may direct the payment to him of any wages found to be due, not exceeding the sum of forty dollars; and the said Justice or Justices shall make such order for payment of the said wages as to him or them seems just and reasonable, with costs; and in case of non-payment of the same, together with the costs, for the space of twenty-one days after such order has been made, such Justice or Justices shall issue his or their warrant of distress for the levying of such wages, together with the costs of conviction and of distress." (*Ib.* s. 12.)

OUTRAGES ON THE FRONTIER.

The outrages committed and attempted upon the people of the United States of America by persons desiring to bring about, by such outrages, war with the United Kingdom and the United States of America, caused the legislature of Canada at its last session to enact as follows:

"When and so often as the Governor of this province shall have reason to believe from information given to him or to the

secretary of the province, in writing, by any person subscribing his or her name and address thereto, that for the preservation of the peace and tranquillity of this province it is expedient to remove therefrom any alien or aliens who may be in this province, or who may hereafter arrive therein, it shall be lawful for the Governor, by order under his hand to be published in the *Canada Gazette*, to direct that any such alien or aliens who may be within this province, or who may hereafter arrive therein, shall depart from this province within a time limited in such order; and if any such alien shall knowingly and willingly refuse or neglect to pay due obedience to such order, or shall be found in this province contrary to such order, after such publication thereof as aforesaid, and after the expiration of the time limited in such order, it shall be lawful for the Governor or for any Justice of the Peace to cause every such alien to be arrested and to be committed to the common gaol of the county, district, or place where he or she shall be so arrested, there to remain without bail or mainprize until he or she shall be taken in charge for the purpose of being sent out of the province under the authority hereinafter given." (28 Vic. c. 1.)

"Every such alien so knowingly and wilfully refusing or neglecting to pay due obedience to any such order as aforesaid shall be guilty of a misdemeanor, and being convicted thereof shall, at the discretion of the court, be adjudged to suffer imprisonment for any time not exceeding one month for the first offence, and not exceeding twelve months for the second and any subsequent offence." (*Ib.* s. 2.)

"It shall be lawful for the Governor in any case in which any alien shall be found in this province after the expiration of the time limited in such order, and whether he or she shall or shall not have been arrested or committed for refusal or neglect to obey such order, or convicted of such refusal or neglect, and either before or after such alien shall have suffered the punishment inflicted for the same, by warrant under his hand and seal, to give such alien in charge to any person or persons to whom he shall think proper to direct such warrant

in order to such alien being conveyed out of the province, and such alien shall be so conveyed accordingly: Provided always, that in case such alien shall be taken in charge as aforesaid after the close of the navigation of the river Saint Lawrence in the winter and before its opening in the spring, then and in any such case the said alien may, should the Governor see fit, be detained in safe custody until one month after the opening of such navigation: And provided further, that where such alien (not having been convicted as aforesaid) shall allege any excuse for not complying with such order, or any reason why the same should not be enforced, or why further time should be allowed him or her for complying therewith, it shall be lawful for the Governor in council to judge of the sufficiency of such excuse or reason, and to allow or disallow the same either absolutely or on such condition as he shall think fit; and where such alien shall be in custody under such warrant of the Governor, the person in whose custody he or she shall be, forthwith upon its being signified to him that such excuse or reason is alleged by such alien, shall make known the same to the Governor, who, upon receiving such notification, or in any case in which he shall be informed that any such excuse or reason is alleged by or on behalf of any alien to quit the province, shall forthwith suspend the execution of such warrant until the matter can be inquired into and determined by the Governor in council; and such alien, if in custody under any such warrant, shall remain in such custody; or if not in custody may be given in charge by any such warrant as aforesaid, and shall remain in custody until the determination thereon shall be made known, unless in the meantime the Governor shall consent to, or the Governor in council shall make order for the release of such alien, either with or without security: Provided always, that the Governor shall cause to be delivered to such alien in writing a general summary of the matters alleged against him or her, and shall allow him or her reasonable time to prepare his or her defence; and it shall be lawful for him or her to summon and examine upon oath witnesses before the said Governor in council, and to be heard before them by himself or herself, or his or her

counsel, in support of the excuse or reason by him or her alleged." (*Ib.* s. 3.)

"In every case in which power is given by this act to commit any alien to gaol without bail or mainprize, it shall be lawful for any justice of any of her Majesty's superior courts in this province, if upon application made he shall see sufficient cause, to admit such person to bail, he or she giving sufficient security for his or her appearance, to answer the matters alleged against him or her." (*Ib.* s. 4.)

"Where any alien who shall have been committed under this act to remain until he or she shall be taken in charge for the purpose of being sent out of the province, shall not be sent out of the province within one month after such commitment, or when taken in charge after the closing of the navigation of the river Saint Lawrence as aforesaid, then within one month after the opening of such navigation it shall in every such case be lawful for any of the Justices of any of her Majesty's superior courts in this province, or for any police magistrate or any recorder of a city, or for any two of her Majesty's Justices of the peace in any part of the province, or for any judge of the sessions of the peace in Lower Canada, upon application made to him or them by or on behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application had been given to the Governor, according to his or their discretion, to order the person so committed to be continued in or discharged out of custody." (*Ib.* s. 5.)

"Nothing in the preceding clauses of this act shall affect any alien under the age of fourteen years, or who shall have been residing within this province for five years next before the passing of this act." (*Ib.* s. 6.)

"If any person shall within this province begin or set on foot, or provide or prepare the means for, or shall within this province engage, aid or assist, or procure another person or other persons to engage, aid or assist in the beginning or setting on foot, or in the providing or preparing the means for any military expedition, raid or enterprise, to be carried on from

thence against the territory or dominions of any foreign state, or against the lives, liberties or properties of any one or more of the inhabitants of any territory or dominions of any foreign state, with whom her Majesty is at peace, every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding three thousand dollars, and imprisoned for a term not exceeding three years." (*Ib.* s. 7.)

"It shall be lawful for any Justice of the Peace upon request in writing of the attorney general or solicitor general of Upper Canada, or of any county attorney in Upper Canada, or of the attorney general or solicitor general of Lower Canada in Lower Canada (or for any recorder of a city or police magistrate in this province, or for any judge of the sessions of the peace in Lower Canada without such request), to cause to be seized and detained any vessel manifestly built, or arranged, or fitted out for warlike purposes and about to depart this province, of which the cargo shall principally consist of arms or munitions of war, when the number of men shipped on board or other circumstances shall render it probable that such vessel is intended to be employed to cruise or commit hostilities upon the subjects, citizens or property of any foreign state with which her Majesty is at peace, and also to cause to be seized and detained any vessel or any arms or munitions of war which may be provided or prepared for any military expedition, raid or enterprise against the territory or dominions of any foreign state with which her Majesty is at peace, and to retain possession of the same until the decision of the Governor be had thereon, or until the same shall be released as hereinafter directed." (*Ib.* s. 8.)

"Any sheriff, collector of customs, county attorney, police magistrate or recorder of a city in this province, any judge of the sessions of the peace in Lower Canada, or any field officer or captain of her Majesty's service, or any field officer or captain of the volunteer militia force, or of the service militia (such field officer or captain of the volunteer militia force or of the service militia being at the time on actual service), or any

other person specially empowered for the purpose by the Governor, shall be and he is hereby authorized and required to seize or cause to be seized any vessel or vehicle, and all arms or munitions of war about to pass the frontier of this province for any place within any foreign state, where the character of the vessel or vehicle, and the quantity of arms and munitions of war or other circumstances shall furnish probable cause to believe that the said vessel or vehicle, arms or munitions of war are intended to be employed by the owner or owners thereof, or any other person or persons, in carrying on any military expedition, raid, enterprise or operations, within the territory or dominions of any foreign state with whom her Majesty is at peace, and detain the same until the decision of the Governor be had for the restoration of the same, or until such property shall be discharged by the judgment of a court of competent jurisdiction; provided that in case such seizure shall be made by a police magistrate, recorder of a city, or judge of the sessions of the peace, he shall, with due diligence, issue his warrant to justify the detention of the property so seized, on an oath or affirmation in the manner required by the next section of this act." (*Ib.* s. 9.)

"It shall be the duty of any officer, other than a police magistrate, recorder of a city in this province, or judge of the sessions of the peace in Lower Canada, making any seizure under the ninth section of this act, to make application with due diligence to any one of the Justices of any of the superior courts of this province, or to any police magistrate, or to the judge of the county court of the county in which such seizure may be made, or to the recorder of any city in which the seizure may be made, or to any judge of the sessions of the peace in Lower Canada, for a warrant to justify the detention of the property so seized, which warrant shall be granted only on oath or affirmation shewing that there is probable cause for believing that the property so seized is intended to be used in a manner contrary to the provisions of this act; and if no such warrant shall be issued within ten days after any such seizure, the said property shall be restored to the owner, but if such

warrant shall be issued, then the property seized shall be detained by the officer until the Governor shall order it to be restored, or until discharged by due course of law." (*Ib.* s. 10.)

"The owner or claimant of any property seized under the eighth and ninth sections of this act in Upper Canada may file his petition, setting forth the facts of the case, in any of the superior courts in Upper Canada, or in the county court of the county in which such seizure was made; and the owner or claimant of any property seized under the said sections in Lower Canada may file his petition in the superior court or circuit court of Lower Canada, setting forth the facts of the case, and thereupon such court shall proceed with all convenient despatch, after causing due notice to be given to the officer making such seizure, to decide upon the said case, and order restoration of the property, unless it shall appear that the seizure was authorized by this act; and the superior, circuit and county courts shall have jurisdiction, and are hereby vested with full power and authority to try and determine all cases which may arise under the said sections of this act; and in Upper Canada all issues of fact arising under it shall be decided by a jury in the manner now provided by law." (*Ib.* s. 11.)

"Whenever the officer making any seizure under the ninth clause of this act shall have applied for and obtained a warrant for the detention of the property, or the claimant shall have filed a petition for its restoration and failed to obtain it, it shall and may be lawful for the claimant or owner to file with the officer a bond to the amount of double the value of the property so seized and detained, with at least two sureties, to be approved by the judge granting the warrant or refusing restoration, with a condition that the property when restored shall not be used or employed by the owner or owners thereof, or by any other person or persons, with his or their privity, in carrying on any such military expedition, raid, enterprise or operations as aforesaid, and thereupon the said officer so detaining the said property shall restore the same to the owner or claimant thus giving bond; provided that such restoration

shall not prevent seizure from being again made, in case there may exist fresh cause to apprehend a new violation of any of the provisions of this act." (*Ib.* s. 12.)

"It shall not be necessary to lay the venue in any prosecution under this act in the county or district where the offence was committed, but the information may be laid and the offence may be tried in any county or district in this province." (*Ib.* s. 13.)

"It shall be lawful for any Justice of the Peace upon request in writing of the attorney-general or solicitor-general of Upper Canada or of any county attorney in Upper Canada, or of the attorney-general or solicitor-general of Lower Canada, or for any judge of the sessions of the peace in Lower Canada, or for any recorder of a city or police magistrate in this province, without such request, and upon information upon oath of one or more credible witness or witnesses that he or they believe that any arms or munitions of war are for the purpose of being employed in any military expedition, raid, enterprise, or hostile operations beyond the frontier of this province, or for any purpose dangerous to the public peace within this province, in the possession of any person or persons, or in any house or place, or that any person or persons is or are concerned or engaged in the manufacture of any arms or munitions of war, to issue his warrant to any constable or other peace-officer to search for and seize such arms or munitions of war in the possession of any such person or in any such house or place; and it shall be lawful for any such constable or other peace-officer acting under any such warrant, or any other person or persons in his or their aid or assistance, to search for and seize any such arms or munitions of war being in the possession of any such person or in any such house or place as aforesaid; and in case admission into such house or place shall be refused or not obtained within a reasonable time after it shall have been demanded, to enter by force, by day or by night, into every such house or place whatsoever, and to detain or cause to be detained in safe custody in such place as the said Justice of the Peace or other officer by whom such war-

rant was granted shall appoint and direct, the arms or munitions of war found and seized as aforesaid, unless the owner thereof shall prove to the satisfaction of such Justice or officer by whom such warrant was granted that such arms or munitions of war were not kept for any or either of the purposes aforesaid." (*Ib.* s. 14.)

"It shall be lawful for any person from whom any such arms or munitions of war shall be so taken as last aforesaid, in case the Justice of the Peace or officer upon whose warrant the same shall have been taken shall upon application made for that purpose refuse to restore the same, to apply by petition for the restoration of the same in the manner hereinbefore provided in the eleventh section of this act, and the court in which any such petition has been filed, or any judge thereof, shall make such order for the restoration or safe custody of such arms or munitions of war as shall upon such petition appear to be proper." (*Ib.* s. 15.)

"Nothing in this act shall be construed to interfere with any law in force in this province respecting the writ of *habeas corpus*." (*Ib.* s. 16.)

"The word 'arms' shall be held to mean and include any weapon or weapons, or portions of any weapon or weapons, or arms, and anything necessary for the ordinary use, and any ordinary or necessary appendage of any weapon or weapons or arms or munitions of war, or for the carriage or transport of any weapon or weapons, or arms or munitions of war." (*Ib.* s. 17.)

"The word "munitions of war" shall be held to mean as well any weapon or weapons or arms, and any portion or portions of any weapon or weapons or arms, and anything necessary for the ordinary use, and any ordinary or necessary appendage of any weapon or weapons or arms, or for the carriage or transport of any weapon or weapons or arms or munitions of war, as also all ammunition and substances employed in the manufacture or composition of ammunition, gunpowder, shot, shell, or materials for encasing the same or forming ingredients thereof or used therewith, and all or any

inflammatory, combustible, or explosive article or articles, substance or substances, and all or any inflammatory, combustible, or explosive missiles or machines, and all or any thing or things necessary or requisite for the use, and any ordinary or necessary appendages of any arms or munitions of war." (*Ib.* s. 18.)

"This act shall continue in force for one year from the passing thereof, and until the end of the then next session of parliament." (*Ib.* s. 19.)

RECOGNIZANCE AND ESTREAT.

In criminal cases, as soon as the Justice decides to send the case under investigation to court for trial (whether all the witnesses have then been examined or not), he should call in all the witnesses then examined who can give evidence on behalf of the crown, and bind them in recognizance to appear at the court to which he decides to send the case and prosecute or give evidence.

It is not necessary for him, then, to write out at full length as *ante*, pages 59 and 60: it will be sufficient if he enters in his book thus:

The Queen against L. J. [*name party at full length.*]

A. B. in $200 to appear, prosecute, and give evidence at the next court of Quarter Sessions for the county of —— [*or as the case may be*]; C. D. and E. F. in $100 each, to appear and give evidence at said court.

The Justice should read or report to them the conditions (*ante*, page 60) applicable, and after they severally admit themselves content with the said conditions he should sign it.

He should then fill out and sign and serve on each of the parties so bound a notice in the form *ante*, page 60.

Each Justice should be supplied by the clerk of the peace with several of these blank notices and blank recognizances.

Married women and children cannot enter into a recognizance, and therefore it will be necessary to have some other person to enter into a recognizance for them.

Whenever the Justice finds that one of the witnesses for the crown was an accomplice of the accused, he should require

such accomplice to procure sufficient security that he will appear and give evidence at the time. In the event of the accomplice refusing, or being unable to procure a party to become his security, the Justice should cause proceedings to be taken against the accomplice, and have him also sent to prison.

In the foreign enlistment cases, where the witness enlisted in foreign service, the witness can be proceeded against as well as the person who caused him to enlist; and inasmuch as these cases are very frequently settled by the parties, proceedings should be commenced against all such witnesses, and they should be sent to prison unless they give security that they will appear and give evidence.

It is sometimes the case that witnesses, feeling themselves to be poor and unable to attend court, refuse to enter into recognizance. In such a case, the Justice should inform them that if indigent the court can make an order, for the payment of such sum as the witness may necessarily have to expend in attending court; and if they still refuse, he should inform them of his duty under chapter 102, section 40 (see *ante*, page 41), and in the event of their still refusing, should commit the party to gaol.

When the Justice transmits the papers to the county crown attorney, he should inform him of the name of any witness for the crown who is unable to pay the expenses connected with his attendance at the trial.

If the witness so stated by the Justice to be indigent attends court and asks to be allowed the amount of his disbursements, the county crown attorney should certify the facts to the presiding judge, and request him to make an order for the payment of such sum as the witness may require to disburse during his absence from home, or such portion thereof as may be deemed just.

EVIDENCE.

The word evidence, considered in relation to law, includes all the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation.*

Satisfactory or sufficient evidence is that amount of proof which ordinarily satisfies an unprejudiced† mind beyond reasonable doubt. The circumstances which will amount to this degree of proof can never be previously defined: the only legal test of which they are susceptible is their sufficiency to satisfy the mind and conscience of an ordinary man.†

ATTENDANCE OF WITNESSES.—Justices have ample power to bring before them persons required as witnesses, and also to provide for their attendance to give evidence at the superior courts. (See *ante*, p. 77.)

Many Justices do not attach importance to the recognizance to appear and give evidence, and frequently they return the examinations and depositions without the recognizance of the witnesses for the crown. When this is the case, a temptation is held out to the prisoner or some designing friend to try and prevent the attendance of the crown witnesses at court.

With the exception of married women, all persons, including minors, may be bound by recognizance to appear and give evidence. The husband, or some friend of a married woman, should be procured to become the surety for the appearance of a married woman to give evidence.

There is no good reason why the law should not be so amended as to permit a married woman to become bound by recognizance to be enforced against her and her property, if living apart from her husband; and against her husband, if living with him, as in such case she is presumed to be under his control.

Justices have the power to commit all others than married women who refuse to enter into recognizances to appear and

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* Taylor on Ev. sec. 1. † *Ib.* sec. 2.

give evidence, in cases of felony and misdemeanor; and they should in all such cases commit persons who refuse to become bound in a penalty for their appearance.

COMPETENCY OF WITNESSES.—"The general rule is, that neither an interest in the matter in question nor a previous conviction of a crime incapacitates a person from being a witness; and the exception to this rule provides that the following persons shall not be competent witnesses on behalf of the side in which they are interested:

1. "Any party to any suit or proceeding individually named in the record;

2. "Any claimant or tenant of premises sought to be recovered in ejectment;

3. "The landlord or other person in whose right any defendant in replevin may make cognizance;

4. "Any person in whose immediate or individual behalf any action may be brought or defended, either wholly or in part;

5. "The husband or wife of any such party to be called as a witness on behalf of such party.

"But any of the said parties so excepted may, in any civil proceeding, be called and examined at the instance of the opposite party." (Con. Stat. U. C. c. 32, secs. 34, 35.)

In cases of bigamy, the first and lawful wife is not a competent witness, but the second wife is.

"In all cases of personal injuries committed by husband or wife against each other, the injured party is an admissible witness against the other."*

PUBLIC DOCUMENTS.—Certified copies of documents provable by their mere production may be given in evidence. (Con. Stat. U. C. c. 32, secs. 6, 7, 8.)

WANT OF RELIGIOUS PRINCIPLE.—"A person who does not believe in a God, and that He will, either in this or the next world, punish those who swear falsely, is not a competent witness."†

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* 1 East P. C. 455. † Roscoe, C. E. 121.

WANT OF UNDERSTANDING.—"A child of any age, capable of distinguishing between good and evil, may be a witness, and examined on oath."*

"When a child is found incompetent from want of religious instruction, the case may be postponed a reasonable time till he obtains such instruction as will qualify him to take an oath."*

AFFIRMATIONS BY QUAKERS, MENONISTS, AND TUNKERS.—"In any case, criminal or civil, in which an oath, declaration, or affirmation is required by law, or upon any lawful occasion whatever, on which the oath of any person is by law admissible, a Quaker, Menonist, or Tunker, or a member of the church known as the '*Unitas Fratrum*,' or the United Brethren, sometimes called the Moravian Church, having first made the following declaration or affirmation, viz., 'I, A. B., do solemnly, sincerely, and truly declare and affirm that I am one of the society called Quakers, Menonists, Tunkers, or *Unitas Fratrum*, or Moravians' (*as the case may be*), may make his affirmation or declaration in the form following, that is to say: 'I, A. B., do solemnly, sincerely, and truly declare and affirm,' &c.; and such affirmation or declaration shall have the same force and effect to all intents and purposes, in all courts of law and equity, and all other places, as an oath taken in the usual form."† (Con Stat. U. C. c. 31, s. 1.)

AUTHORITY TO ADMINISTER.—"Every person authorized or required to administer an oath for any purpose, may administer such affirmation or declaration." (*Ib.* s. 2.)

RULES RESPECTING EVIDENCE.

EVIDENCE SHOULD BE CONFINED TO THE POINTS IN ISSUE.—This rule can only be applied by Justices to cases which they

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* Roscoe, 118.

† AFFIRMATION IN PLACE OF OATH.

I, A. B. do solemnly, sincerely and truly affirm and declare that I am a member of the religious sect called (whatever it may be), and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect; and I do also in the same solemn manner affirm and declare that the evidence which I shall give in the matter of (or case of, as the case may be,) [here name complainant and defendant] shall be the truth, the whole truth, and nothing but the truth.

have the power to try, and do try, summarily. When the Justice states the substance of the information or complaint to the defendant, he should take down the answer of the defendant, and then confine the evidence to the issue or issues raised by it.

We will suppose a case, in which A. summoned B. for the recovery of a certain amount of wages; that when the case is stated by the Justice, B. answers that A. left B.'s employment before the time for which he (A.) had hired had expired. In this case the evidence will be confined to the question as to whether or not A. left before the expiration of the time for which he hired, unless A. replies to B.'s plea or defence, that though he left before the expiration of the time, he left in pursuance of an agreement with B. that he (A.) should be allowed to leave. In this last case the question will be as to whether or not such agreement or understanding was entered into, and evidence not touching upon that question should not be received.

BEST EVIDENCE.—"The best evidence of which a case *tried* by Justices is susceptible should always be produced. This rule does not demand the greatest amount of evidence which can possibly be given of any fact; but its design is to prevent the introduction of any which, from the nature of the case, supposes that better evidence is in the possession of the party."*

"This rule does not prevent a party from selecting the weaker instead of the stronger evidence, in case of an omission to supply all the proofs capable of being produced."†

SECONDARY EVIDENCE.—"It is the general rule that secondary evidence is inadmissible, until it be shewn that the production of primary evidence is out of the power of the party offering such secondary evidence.

Secondary evidence of the contents of documents may be received: 1st. After evidence has been given that the document once existed, and that it has been destroyed; 2nd. When the original has been proved to be in the possession of the

* Taylor, 382. † 1 Ph. Ev. 481.

adverse party, who refuses to produce it after notice to produce, in those cases where notice to produce is necessary.

It is the general rule that notice to produce must be given; and the exceptions are in those cases where, from the proceedings, the defendant must know that he will be charged with the possession of the instrument, and called upon to produce; or when it is shown that the adverse party or his attorney has the original instrument in court.

3rd. Secondary evidence of contents of writings, when their production is either impossible or inconvenient. Thus, notices warning trespassers, affixed to boards, gravestones, surveyors' marks on trees, and the like, may be proved by secondary evidence.

4th. It will be found from the perusal of sec. 31, *ante* p. 38, that secondary evidence of oral testimony taken before Justices in criminal cases may be received, provided it is proved either, first, that witness is dead, or second, that the witness "is so ill as not to be able to travel," and "it is also proved that the deposition was taken in the presence of the person so accused, and that he, his counsel or attorney, had a full opportunity of cross-examining the witnesses," provided the deposition purports to be signed by the Justice by or before whom the same purports to have been taken.

It is also provided (see s. 33, *ante*, p. 39,) that "upon the trial of any person the examinations may, if necessary, be given in evidence against him without further proof thereof, unless it be proved that the Justice or Justices purporting to have signed the same did not in fact sign the same."

Under this clause the secondary evidence can be used in the event of the witness being *kept out of the way* by the adversary, or becoming insane, or in any case where it is decided by the court to be *necessary* that such evidence should be used.

It is evident that the legislature intended that the Justice should not only take all the "statements" of the witnesses which refer to the charge against the accused; but that they should take down the statements of the witnesses as nearly as can be in their own words. "Not only does it frequently happen that facts which on preliminary inquiry appear to be

of trifling importance, turn out in the sequel to be extremely relevant; but where all the evidence is not given, the court, the prosecutor, and the prisoner are alike kept in the dark, and much time may be wasted in endeavouring to throw discredit upon the testimony of witnesses by shewing that they have made statements at the trial which are not to be found in the depositions."*

PRESUMPTIONS.—The law presumes a man to be innocent until the contrary be proved, or appears from the presumption raised by the facts proved.

Presumptions are of three kinds: violent presumptions, when the facts and circumstances proved *necessarily* attend the fact presumed: probable presumptions, when the facts and circumstances proved *usually* attend the fact presumed; and *light or rash* presumptions, which have no validity.

If upon a charge for murder it were proved that deceased was murdered in a house, and that the defendant was immediately afterwards seen running out of it with a bloody sword in his hand, these facts raise a violent presumption that the defendant was the murderer.†

Upon a charge for stealing in a house, if the defendant be apprehended or discovered a few yards from the door with the stolen goods in his possessession, it would be a violent presumption of his having stolen them; but if they were found in his house some time after the larceny, and he refused to account for his possession of them, this, together with the proof that they were stolen, would amount to a *probable* presumption merely; but if the property were not found recently after the loss—as, for instance, not until sixteen months after—it would be but a slight or rash presumption.‡

If the prisoner gives a *reasonable* account of the manner in which he became possessed of the goods, this will so far rebut the presumption as to throw it upon the prosecutor to negative that account.

The prisoner should be presumed to intend to do that which would be the probable and natural consequence of his acts, and

* Taylor, s. 453. † 1 Gil. Ev. 147, 157. ‡ R. v. —, 2 C. & P. 459.

therefore the intent to kill is conclusively inferred from the deliberate violent use of a deadly weapon.*

HEARSAY.—It is the general rule that hearsay is no evidence, and for two reasons: what the other person said is not upon oath, and the party who is to be affected by it had no opportunity of cross-examining him.†

To this general rule there are exceptions.

What a witness has been heard to say at another time may be given in evidence, in order to invalidate or confirm the testimony he gives in court.

When hearsay is introduced not as a medium of proof to establish a distinct fact, but as being part of the transaction in question, it is admissible. Declarations made by an agent acting at the time within the scope of his authority, are receivable against the principal. Upon the same principle the declarations of a person robbed, or a woman ravished, as to the facts, made immediately afterwards, are evidence to confirm them, though the *particulars* of their statement cannot be inquired into.

Dying declarations can only be received in cases of homicide when the death of the deceased is the subject of the charge, and the circumstances of the death is the subject of the dying declaration.‡

It is essential to the admissibility of these declarations, first, that at the time when they were made the declarant should have been *in actual danger of death;* secondly, that he should then have had a full *apprehension of his danger*, and lastly that *death had ensued.*

ADMISSIONS AND CONFESSIONS.—Admissions and confessions are admissible, unless they were made in *consequence* of some inducement or threat, which, being held out or sanctioned by a person in authority, related to the prisoner's escape from the charge against him.‖

In most cases, it may be admissible and proper to caution the prisoner *in general terms* that any confession he makes will be admissible against him at the trial, and can do him no service. Still it is not necessary in general to do more, than that the

* Taylor, 94. † 4 Gil. Ev. 149. ‡ Taylor, s. 644. ‖ Taylor, s. 807.

party receiving the confession should leave the prisoner at full liberty to act and judge for himself.

Though the law is as above stated, many Justices are in the habit of *dissuading* the culprit with more or less earnestness from disclosing any fact which may tend to establish his guilt. This practice, which is rather to be admired for romantic generosity than for wisdom, or for any beneficial consequences resulting therefrom to the public, has been very properly condemned by several able judges as an absurd and improper mode of shutting up one of the most valuable sources of justice and truth.*

When the Justice, after the close of the examination and commitment of defendant for trial, becomes informed that the defendant made admissions which do not appear in evidence, he should, without delay, write and communicate the facts to the Crown Attorney, that he may have time to determine as to whether or not it will be necessary to subpœna other witnesses than those examined before the Justice.

EXAMINATION OF WITNESSES.—If the Justice believes that it will promote the discovery of truth that the witnesses be *examined out of the hearing of each other*, he should order that all or such of the witnesses as should be examined apart retire.

DISOBEDIENCE OF WITNESS.—If a witness disobeys the order to withdraw, he is guilty of a contempt of court; but the Judge or Justice has no right to reject the witness who disobeys the order to retire. If a person called as a witness refuses to be sworn, or if sworn refuses to give evidence, the Justice should not hesitate to commit him under the authority of Con. Stat. C. c. 103, s. 19, *ante* p. 77.

REFRESHING MEMORY.—A witness may refresh and assist his memory by the use of a written instrument, memorandum, or entry in a book, provided the writing was made at about the time of the fact in question by himself, or at or about the time made known by him to be correct.

LEADING QUESTIONS.—"As it is the general rule that the party who produces a witness cannot ask him questions which sug-

* Taylor, s. 805.

gest the answer desired, the Judge or Justice before whom a witness is examined may, in his discretion, allow leading questions to be put, whenever and under whatever circumstances and to whatever extent he may think that justice requires that a leading question should be put."*

"When the witness proves adverse to the party producing him, interested for the opposite party, or is a witness of tender years, leading questions may be allowed."*

ADVERSE WITNESS.—"A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but in case the witness, in the opinion of the Judge, proves adverse, such party may contradict him by other evidence; or, by leave of the Judge, may prove that the witness made at other times a statement inconsistent with his present testimony. But before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement." (Con. Stat. U. C. c. 22, s. 214.)

CROSS-EXAMINATION.—Upon cross-examination, the witness may be asked leading questions. The questions on cross-examination need not be confined to the matters spoken of in the examination-in-chief.

No question respecting any fact *irrelevant* to the question at issue can be put to a witness, for the purpose of afterwards contradicting him; and if such a question is put and answered, the answer will be conclusive.

With the view of impeaching the character of a witness, he may, on cross-examination, be asked questions with regard to alleged *crimes* or other improper conduct on his part; and if the fact inquired into be relevant, it may, if desired, be proved by other evidence.†

In an action on a promissory note, the execution of which was disputed, it was held material to ask the subscribing witness whether she was not the plaintiff's kept mistress.‡

* Taylor, s. 1263. † Taylor, s. 1293.

‡ *Thompson* v. *David*, 7 C. & P. 350.

WHAT QUESTIONS WITNESS NOT COMPELLED TO ANSWER.—A witness is not compelled to answer when the answer would have a tendency to expose the witness, or the husband or wife of the witness, to any kind of criminal charge, or to a penalty or forfeiture of any nature whatever.

When the witness declines to answer, the Judge or Justice should question the witness and decide as to whether or not he is to be required to answer. If the question touching which the witness is interrogated forms any material part of the issue, he will be obliged to give evidence, however strongly it may reflect on his conduct.*

IMPEACHING CREDIT OF WITNESS.—The credit of a witness may be impeached in any of several ways: 1st. Witnesses may be called to disprove such of the facts stated by him as are material to the issue; 2nd. Proof may be given of statements made by the witness inconsistent with his testimony at the trial; and, 3rd. Evidence may be given reflecting on his character for *veracity*. The evidence must be confined to his *general reputation*, and will not be permitted as to *particular facts*.

The regular mode of examining into the character of the person in question is to ask the witness whether he knows his general reputation among his neighbours; what that reputation is; and whether from such knowledge he would believe him upon his oath.†

When the general reputation of a witness has been impeached, the party calling the witness so impeached may re-establish his credit by cross-examining the witnesses who have spoken against him as to their means of knowledge and the grounds of their opinion, or as to the hostile feelings towards the person whose testimony they have discredited, or as to their own character and conduct, or by calling other witnesses either to support the character of the first witness or to attack in their turn the general reputation of the impeaching witnesses.‡

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* Taylor, s. 1313. † Taylor, s. 1324. ‡ Taylor, s. 1327.

INDEX.

A.

PAGE

ABDUCTION 128
Of females under sixteen 129
Of heiress 128
ABETTORS, &c., how punishable 76
Accessories, &c. 131
In misdemeanors 134
ABORTION, attempt to procure 130
ABSCONDING DEBTORS, duties of Justices in certain cases relating to 557
When Justice may issue attachment against 557
Warrant of attachment against, note 558
ABUSE OF INFANTS 130
ACCESSORIES AND ABETTORS 131
To felony before the fact 131
To felony after the fact 132
Generally 133
&c., to robbing a post-office 418
Aiders and abettors to same 419
Trial of offenders and, in cases of forgery 285, 289
Trial of 289
To murder 388
ACCOMPLICES 135
ACCOUNTS, neglecting or refusing to render, by distillers, &c. 242
Constables' 190
ACCUSED, notice of recognizance to be given to, and his bail 63, 66
Admissions of, may be used as evidence against him 89
Warrant to convey, before Justice in another county 64
Statement of the 59
Justice to caution, as to any statements he may make 38
Power of Justice to remand 41
May be admitted to bail 42
May be brought up at an earlier day 42
ACCUSATIONS, FALSE, to extort 534
ACTIONS, limitation of 357
And prosecutions, where to be tried 357
Notice of 357
ADDENDA 557

PAGE

ADJOURNMENT of examination on recognizance of bail.....63, 87
ADJOURNMENT, warrant of committal during the hearing..... 401
ADJUDICATE, refusal to 17
ADMISSIONS of accused as evidence against him..... 39
And confessions, *see* Evidence..... 591
ADVERSE WITNESS, *see* Evidence..... 593
ADVERTISING for stolen property, *see* Larceny 354
AFFIDAVIT of attachment against absconding debtors..... 557
AFFIRMATION, Justices to administer oath or..... 38, 58
By Quakers, Menonists, Tunkers, &c..... 587
AFFRAYS 135
AGENTS selling liquor in contravention of law, punishment of.....506, 510
AGREEMENT with pound keeper by party impounding cattle, &c..... 498
ALIENS may become naturalized 558
Oath of residence to be taken by 558
Oath of allegiance to be taken by 559
Certificate of residence to be given to, by Justice..... 559
Oaths and certificates of, to be filed..... 559
Certificate of naturalization of 560
Governor may order, to leave the province in certain cases..... 574–6
Not leaving the province when ordered, may be imprisoned, &c..... 575
If, committed to gaol without bail, Judge may admit to bail in certain cases 577
When, committed to gaol may be sent out of the province..... 577
When, committed to gaol may be discharged 577
Under fourteen years of age..... 577
ALLEGIANCE, oath of, to be taken by aliens wishing to become naturalized.. 559
AMUSEMENTS AND GAMES on the Lord's Day prohibited 424
ANIMALS, cruelty to..... 205
Stealing domestic, *see* Larceny..... 351
What, to be impounded 407
Liability of owners of..... 407
Sale of impounded 407
If impounded, are worth more than $10..... 407
Notice of sale of impounded..... 409
Liability of pound-keeper for refusing to feed impounded 411
Sale of impounded, and how purchase money applied 410
APPEAL from order, decision or conviction of Justice..... 20
Costs of, to whom payable..... 95
Costs of, how recoverable 96
Against summary convictions under the criminal acts..... 20
Gaoler to receive costs of, and discharge prisoner..... 99
In case an, against conviction, Justice may issue warrant..... 95
If costs of, be ordered to be paid..... 95
If costs not paid within a certain time..... 96
Certificate of Clerk of the Peace that costs of an, are not paid 121

PAGE

APPEAL, warrant of distress for costs of an, &c. 121
General form of notice of, against a conviction 126
Form of recognizance to try the 125
Against convictions for cruelty to animals 209
Procedure in cases of 136
Against convictions 136
Triable by jury 136
In cases of summary convictions 137
From Quarter Sessions and Recorders' Courts 138
May be abandoned by appellant giving six days' notice, &c. 138
In cases referring to ferries 259
In cases under laws relating to spirituous liquors 507, 519
APPEARANCE of both parties 83
APPRENTICES, definition of term 383
Deserting their masters' service 384
Complaints by, against masters 383
Complaints by masters against 383
Penalty for harboring absconding 385
Minors and 383
Death of, by bad treatment of master, *see* Murder 388
APRONS, millers to construct, to their dams 376
To dams on the river Moira 378
ARMS, illegal drilling to the use of 216
Returning Officers of elections may demand the surrender of all 221
Clothing, &c., belonging to the Crown, penalty for having possession of 383
Possession of, by persons near public works 478
And munitions of war, may be seized in certain cases 578–81
ARREST of offenders caught in the act at night 140
Of persons in possession of goods supposed to have been stolen 140
When a constable may make, without a warrant 140
For cruelty to animals 207
Of party not appearing under the laws relating to highways 319
Of aliens in certain cases 575
Duty of constable in case of 35
How made 139, 190
How made, if offender caught in the act 139
For alleged breaches of the peace 141
Of aliens refusing to leave the province when directed 575
ARSENALS, magazines, &c., arson of 144
ARSON 141
Of houses containing persons 141
Of churches, &c. 142
Of school-houses, &c. 142
Of ships 143
Of haystacks, &c. 143
Attempts to commit 143

PAGE

ARSON, of railway buildings ... 144
Of dockyards, &c. ... 144
ARTICLES OF THE PEACE, costs in ... 204
ASSAULT, definition of ... 145
Common ... 145
What amounts to an ... 145
Battery ... 145
What does not amount to ... 146
Aggravated ... 147
Summary proceedings in cases of ... 147
On persons apprehending offenders by night ... 149
On a magistrate or officer, in certain cases ... 150
With intent to commit a rape ... 151
With intent to rob ... 151, 488
On bailiffs, &c., of division courts ... 152
Form of conviction in ... 152
And battery during elections to be deemed aggravated ... 221
Certain, punishable with imprisonment ... 328
And robbery ... 488
ASSEMBLIES, unlawful, *see* Riots, &c. ... 473
ASSESSORS, Collectors, &c., offences by ... 445–6
ASYLUMS, Private Lunatic, Justices may license ... 362
ATTEMPT to commit felony, *see* Assault ... 149
To commit offences ... 152
To destroy buildings, &c., *see* Explosive Substances ... 247
ATTENDANCE may be compelled by warrant ... 82
Of witnesses, *see* Evidence ... 585
ATTORNEY, counsel or prosecutor may be heard by ... 82
Both parties may have an ... 153
Embezzlement by an ... 229
COUNTY CROWN ... 16, 562
GENERAL, consent of, to indictments for embezzlement ... 231
AUCTIONEERS, hawkers, &c., licensing of ... 356
AUDITORS, appointment and duties of School ... 438
AUTHORITY to administer oaths, who has ... 587
AWARD of fence-viewers to be in writing ... 254

B.

BACKING WARRANTS ... 34, 56
Endorsement in, of distress ... 116
BADGES, Party, at elections, prohibited ... 222
BAGS, Stealing from letter ... 414
Injuring letter ... 417
BAIL ... 154
In misdemeanor ... 13
Accused may be admitted to ... 42

PAGE

BAIL, In case of misdemeanor one Justice may ... 45
When two Justices may, in case of felony, ... 45
When County Judge may order to be admitted to ... 46
Recognizance of, instead of remand ... 63
Recognizance of ... 65
Notice of recognizance of, to be given to accused and his bail ... 66
Warrant of deliverance on, being given for a prisoner already committed ... 66
Falsely personating ... 279
Transmitting depositions when desired ... 50
Defendant may be admitted to, till return of distress ... 92
Judges may admit aliens, imprisoned by order of the Governor, to ... 577
BAILABLE, offences not, except by Judge's order ... 46
BAILEES, larceny by, *see* Larceny ... 354
BAILIFFS, &c., of division courts, assaults on ... 152
BANKERS, embezzlement by ... 229
BANKRUPTCY, &c., Justices not to hear cases of assault where questions as to, arise ... 149
BANKS OF CANALS, &c., breaking down, &c. ... 369
BASS, black, and other fish, time for catching ... 267
BASTARDS, *see* Support of Illegitimate Children ... 531
BATTERY, *see* Assault ... 145–6
During elections deemed aggravated assault ... 221
At or near public meetings, how punishable ... 443
BATHING in public places, municipalities may pass by-laws against ... 392
On the Lord's-day prohibited ... 424
BAWDY or other disorderly house, a nuisance ... 390
BEAVER, musk-rats, &c., time for taking ... 303
BELLS, sleigh horses to have ... 321
Railway engines to have ... 465
BENCH WARRANT ... 80
BIGAMY ... 154
BILL OF COSTS, *see* Costs ... 204
BILLET TROOPS, Justices of the Peace required to ... 381
No Justice of the Peace, being an officer, to ... 381
BILLETTING ALLOWANCE ... 381
BILLIARD TABLES, licensing of ... 356
BILLS, &c., forgery of foreign ... 281
Engraving ... 280
BIRDS, destruction of insectivorous, prohibited ... 303
Municipal councils may pass by-laws preventing the destruction of 210
BIRD-NESTS, the destruction or possession of certain, prohibited ... 304
Or eggs for scientific purposes, permission to obtain ... 305
BOARDING-HOUSES, *see* Inns and Innkeepers ... 329–30
BOATS, railways, &c., required for the use of troops ... 382
See Ferries, offences relating to ... 259

PAGE

Boats, parties may keep for their own use 259
Bodies, offences relating to dead 210
Bonds to the Crown, under the Militia Act 382
Books, neglecting or falsifying entries in, by distillers or brewers 242
Breaches of the Peace, arrest for alleged 141
Interference to prevent, *see* Assault 146
Brewing without license 241
Breweries and distilleries, hindering inspection of 242
And distilleries, working without notice 243
Bribery at elections 155
By voter 156
Hiring vehicles 157
Violence, &c. 157
Bridges, tolls on 309
Bridges, certain, notice to be posted at 321
Fast driving over, prohibited 322
Fast driving on 323
Destroying 370
Buildings, arson of railway 144
Destroying, *see* Explosive Substances 246
Fixtures, &c., stealing parts of, *see* Larceny 354
Buggery 158
Evidence of, *see* Rape 448
Threats to accuse of 534
Burglar, definition of term, *see* Burglary 158
Burglary, simple 158
With intent to murder 158
What must be proven on a trial for 159
Burn, attempts to 143
By-Laws, offences against 163
Offences against, by municipal officers 163
Summary conviction under 163
Form of conviction under 164, 291
Municipal councils may pass, for preventing cruelty to animals 210
Municipal councils may pass, for preventing the destruction of birds 210
Municipaltities may pass, for erecting court houses, gaols, &c. 291
Respecting fences, &c., municipalities may pass 258
Respecting storage, &c., of gun-powder in cities, &c. 249
Municipalities may pass, respecting fires, &c. 260–62
Municipalities may pass, against gaming 297
Municipalities may enact against, malicious injuries 376
Municipalities may enact, for protecting public health 487
Municipalities may pass, for protecting ornamental trees 375
Municipalities may pass, for suppressing tippling-houses 391
Municipalities may pass, for preventing certain nuisances 392–3
Municipalities may pass, for the protection of public morals 487

PAGE

By-Laws, municipalities may pass, for preventing obstructions to streams.. 482
Municipalities may pass, for licensing taverns, &c. 503
Municipalities may pass, for prohibiting sale of intoxicating liquors 510
Municipalities may pass, for appointment of inspectors of weights and measures 555
Prohibiting sale of intoxicating liquors, defect of 520
Railway companies may by, impose forfeitures on officers, servants, &c. 468

C.

Canals, &c., breaking down banks of 369
Carrying concealed or unlawful weapons 551
Carriages, &c., for troops, Justices may require persons to furnish 382
Meeting on highways 320
Overtaken on highways 320
Cattle, malicious injuries to 368
Stray, may be distrained by owner of premises on which found 408
If owner of impounded, be known or unknown 408
Notice of sale of impounded 409
Poundkeeper to feed impounded 409
Liability of poundkeeper for refusing to feed impounded 411
Sale of impounded, and purchase money how applied 410
Stealing, *see* Larceny 347
Running at large near railways may be impounded 466
Caution to prisoners in indictable offences 165
To juvenile offenders 384
Certain offences not bailable except by Judge's order 46
Certificate of non-appearance to be endorsed on recognizance 104
Of indictment being found 54
Of dismissal 114
Of dismissal, form of 124
Of clerk of the peace, that costs are not paid 121
Et cetera, required by Customs Act 290
Of oath of Justice, as to property qualification 561
Certiorari 20
Challenge to fight 165
Charitable associations, embezzlement by officers of
Charivaries, *see* Nuisances 392
Chastisement, lawful, not an assault 146
Cheating 166
By false pretences 166
Check-Gates on toll-roads 310
Checks on parcels, *see* Railways 464
Children, decoying, under ten 129
Abuse of 130
Support of illegitimate 531

PAGE

CHURCHES, arson of ... 142
Demolishing ... 867
CLAIM of right ... 16, 171
CLERGYMAN, assaulting a, *see* Assault ... 150
CLERICAL error corrected ... 184
CLERK of sessions, &c. ... 97
As to the fees of ... 97
Penalty for receiving greater fees than entitled to ... 97
What fees, may demand ... 98
Penalties paid to gaoler in L. C. to be handed over to ... 99
To whom he is to pay penalty ... 99, 100
To keep an account of money received by them ... 100
CLERKS, *see* Embezzlement by ... 225
And servants, larceny by, *see* Larceny ... 353
Of Justices, clerks of the peace in Lower Canada to act as ... 101
Fees receivable by Justices of the Peace or their ... 208
Of the Peace in Upper Canada, recognizances to be sent to ... 79
Recognizances in certain cases to be certified by ... 93
Certificate of, that costs of appeal are not paid ... 121
CLOTHING, &c., of troops, penalty for having in possession ... 383
COCK-FIGHTING ... 171, 205
COIN, offences relating to ... 72
Counterfeiting current ... 172
The making or uttering spurious foreign ... 176
Spurious copper and brass ... 177
COLLECTORS and assessors, offences by ... 445–6
COMMISSION of the peace, form of ... 28
COMMITMENT ... 19
After indictment ... 29
Of witness, for refusing to be sworn ... 58, 108
Of witness, for refusing to enter into recognizance ... 61
For trial at next court ... 13
Warrant of, for a person indicted ... 55
Warrant of ... 67
If distress would be ruinous ... 92
If no sufficient distress ... 93
Second ... 93
Defendant to be served with order before, distress or ... 84
In case of appeal, warrant of may issue ... 95
Warrant of, one Justice may issue ... 97
Warrant of, for want of distress ... 117, 120, 122
On refusal to give name, *see* Cruelty to Animals ... 206
How made ... 180
Defective ... 180
For trial ... 180

PAGE

COMMITMENT, in indictable offences ... 180
Upon a conviction for a penalty in the first instance ... 117
Warrant of, or an order in the first instance ... 118
In default of sureties ... 127
In default, *see* Cruelty to Animals ... 206
Where no sufficient distress, *see* Distresses for Small Penalties ... 212
In default, in cases relating to ferries ... 259
Warrant of, under the Fishery Act ... 271
Under the Foreign Enlistment Act, form of ... 571
COMMITTAL for safe custody, warrant of ... 104
For non-payment of fine, &c., under the Fishery Act ... 268
For non-payment of penalties ... 268
COMPLAINANT or defendant not to make observations, &c. ... 85
A competent witness in certain cases ... 87
May be examined on oath ... 87
COMPLAINT, information and, for an indictable offence ... 52
Certain, must be in writing ... 78
Or information must be upon oath ... 80
Or information must be for one matter only ... 80
Or information, time for making ... 80
Or information, as to hearing ... 81
Or information, to be heard in open court ... 81
Or information, proceedings at the hearing of ... 84
If dismissed, Justice may make an order of dismissal ... 86
Or information, order of disposal of ... 113
On dismissal of, warrant of distress for each ... 119
Or information, form of order of dismissal of ... 123
For sureties for the peace, by the party threatened ... 126
Summons to a defendant upon a ... 103
Penalty for preferring unfounded, *see* Distresses for Small Penalties 272
Form of, under the Fishery Act ... 269
COMPOUNDING offences, when allowed ... 282
Felonies ... 181
Misprision of felony ... 181
Corruptly taking reward to recover stolen goods, is ... 181
Offering rewards under promise of secrecy ... 181
CONCEALMENT of birth ... 182
Conviction for an indictment for murder ... 183
CONCUBINE or prostitute, forcing against her will, a rape ... 445
CONDITION, if negatived, need not be proved ... 86
CONDUCTORS of railway trains, intoxication of, a misdemeanor ... 465
CONFESSION may be given in evidence at trial ... 39
CONSECUTIVE imprisonment ... 19
CONSPIRACY ... 183
CONSTABLE, duties of ... 70, 91, 93, 96, 190, 193
Duty of, in cases of arrest ... 35

PAGE

CONSTABLE, to be paid on producing certificate ... 45
To attend court, &c. ... 32
Receipt to be given to, by Justice ... 65
To attend and depose ... 70
Return of, to a warrant of distress ... 116
High ... 190
Office of ... 190
How arrest to be made by ... 190
Accounts of ... 190
To search and hand-cuff prisoner ... 191
Costs of ... 192, 205
Practical directions to a ... 192
Criminal duties of, and execution thereof ... 193
May arrest common prostitutes ... 197
Refusing to assist a ... 197
May arrest without warrant, when ... 140
Appointment of ordinary ... 185
Oath of an ... 185
Appointment of a special ... 185
Oath of a special ... 186
Duties of a special ... 186–9
Appointment of, in unorganized tracts ... 189
A special, at elections, when to be sworn ... 221
CONTEMPT of a justice ... 197
Of court ... 592
CONVEYANCE of prisoners to gaol ... 47
CONVICTION ... 18
Form of, to be as in schedule ... 89, 110
Costs of, to be specified in ... 90
When to be in general form ... 89
Return of ... 12
Formal, or order ... 12
When to be drawn up ... 86
In certain cases, shall be enforced ... 95
In case of appeal against, Justice may issue warrant ... 95
For a penalty, to be levied by distress ... 109
Form of, for offences against by-laws ... 164
Form of, in cases of cruelty to animals ... 207
When the punishment is by imprisonment ... 110
Warrant of distress upon, for a penalty ... 114
Form of, in cases of assault ... 152
Warrant of commitment upon a, for a penalty ... 117
For concealment of birth upon an indictment for murder ... 183
Warrant of distress for costs of appeal against a ... 121
General form of notice of appeal against a ... 121
Meaning of term ... 198

PAGE

CONVICTION, what a summary 198
How offence to be described in 200
Under a by-law 201
Amendment of 201
Death of Justice in reference to a 201
Death of the informer in reference to a 201
Appeal against a 136
Appeal against the case of a summary 137
A summary, under a by-law 163
On view, for violation of Fishery Act 268
Form of, under Fishery Act 270
Of juvenile offenders 336
For offences committed on the Lord's day 425
Return of, to be made by recorder to Quarter Sessions 458
Certified copy of a, to be received as evidence 458
Effect of, by a recorder 459
Form of a summary, by a recorder 460
Form of, by a recorder upon a plea of guilty 460
Returns of 471–3
Under the Foreign Enlistment Act, form of 571
COPY of order defendant to be served with, &c. 89
Of depositions 16
Of charge, persons levying distress to give to party distressed 213
CORONER, duty of a 49
And Justice, penalty on, in certain cases 51
To deliver papers to County Crown Attorney 562, 565
CORPORATIONS to keep roads, streets, &c., in repair 307
Neglect of, to keep roads, streets, &c., in repair 308
Penalty on, for not keeping roads, streets, &c., in repair 323
COSTS, payment of, when party committed wishes to be bailed 50
Payment of, for conveying persons to gaol 48
Power of Justices to award, &c. 90
May be awarded to defendant, when 90
To be specified in conviction 90
May be recovered by distress 90
Of appeal, to whom payable 95
Of appeal, how recoverable 96
Of appeal receivable by gaoler 96
When case is dismissed 202
Fees, receivable by Justices or their clerks 203
Fees in cases not expressly provided 203
As to summary proceedings 204
Of witnesses 204
Bill of 204
Not allowed to Justices or witnesses in certain cases 204
In articles of the peace 204

PAGE

Costs, of Justice when case dismissed 205
Of constables..... 192, 205
In certain cases, recoverable from prosecutor 95
Warrant of distress for, upon an order for dismissal 119
Of an appeal, certificate of clerk of the peace that they are not paid 121
Warrant of distress for, of an appeal 121
Of distress, *see* Distresses for Small Penalties..... 211
Schedule of, on distresses for small rents and penalties 218
In cases under the laws relating to spirituous liquors 210, 515
Counsel or Attorney, prosecutor may be heard by 82
Counterfeiting stamps for marking weights and measures 554
County Crown Attorney 16, 562
To examine informations 562
To conduct business at sessions 563
County Crown Attorney, to watch business at assizes 563
To deliver papers to crown counsel 563
To conduct proceedings before magistrates..... 563
To advise magistrates..... 564
Costs allowed to 564
Cases of illness of, provided for 565
Justices and Coroners, to deliver papers to 565
County Judge may order party committed for trial to be admitted to bail.. 46
Court and opening thereof 8
Places where Judges take examinations, not an open 39
When, to be kept open 81
Court-houses and gaols, regulations respecting 291
Court of Quarter Sessions, *see* General Quarter Sessions 298
Creeks or rivers, lands divided by, *see* Fences 253
Crimes, responsibility for 470
Threats to accuse of 534
Criminal law, the, of Upper Canada 128
Criminals, extradition of fugitive, from B. N. A. Provinces 249
Extradition of fugitive, from U. S. A..... 250
Cruelty to animals..... 205
Binding sheep 206
Arrest for..... 206
Commitment on refusing to give name 206
Limitations of actions in cases of..... 206
Commitment on default 206
Procedure in cases of..... 207
Form of conviction in cases of 207
Custody, warrant of committal for safe..... 104
Warrant of commitment of a person already in..... 56

D.

Damage, malicious, in general 372

PAGE

DAMS and Ponds, destroying 370
Over rivers and streams, not deemed obstructions 481
DEAD Bodies, offences relating to 210
Interment of, *see* Nuisances 292
Protection of graves of 210
DEATH of Justice granting a warrant of commitment, &c. 201
Of informer 201
Felony not punishable with, how punishable 327
Punishment of, for forgery, superseded 276
Riot a felony, punishable by 478
Of rioter by parties attempting to quell a riot 477
Rape punishable by 447
DEBENTURES, forgery of 276, 288
Railway, forgery of 289
DEBTORS, absconding 557
DECISION, two Justices must join in 97
Minute of 19
DECOYING children under ten 129
DECLARATION of voter for school trustee 484
Of voter for school trustee, penalty for false 485
Of school trustee, and fine for not making 489
DEEDS, stealing title, *see* Larceny 348
DEER, &c., killing 301
Trapping 302
DEFAULT, in, of sufficient distress, Justice may commit defendant 93
In, of sufficient distress, imprisonment 109
Of payment, imprisonment 110, 112
Of distress, imprisonment 111
Of sureties, form of commitment in 127
Commitment, *see* Cruelty to Animals 206
DEFENCE, defendant may make full 81
Self, *see* Assault 146
Of possession, *see* Assault 146
DEFENDANT, when entitled to a copy of, depositions 48
Where a, is discharged on recognizance and fails to appear 75
May make full defence 81
In case the, does not appear 82
When, has been apprehended 82
If, appears 83
If, fails to appear 83, 88
Complainant or, not to make observations, &c. 85
Of convicted, minute to be made 86
Justice may commit, or suffer to go at large 87
If, or prosecutor appear, case may be heard 88
To be served with a copy of order of 89
In misdemeanor, not allowed to postpone trial by imparlance 386

PAGE

DEFENDANT, may be bailed until warrant of distress returned 92
If, does not appear, recognizance to be certified by a Justice, and transmitted to the clerk of the peace 93
In default of sufficient distress, Justice may commit 93
Summons to, upon an information or complaint 103
Recognizances for appearance of the, upon adjournment 105
Notice of recognizance to be given to 106
Warrant to remand a, when apprehended 108
Form of notice of recognizance to be given to 125
DELIVERANCE, warrant of, &c. 46
DEPOSITIONS of witnesses 59
How taken 9
Copies of 16
Signature of Justice to be attached to 10
When defendant entitled to a copy of 48
When, can be used at trial as evidence 38
DESERTION, enticing to 211
DESERTER, concealment of 211
DESERTING family, *see* Vagrants 549
DESTROYING machinery 369
DETAINER, forcible entry and 271
Of prisoner in custody 29
DETENTION of person arrested 141
Of vessels, &c., suspected of being intended for illegal expeditions, &c. 578–80
DIRECTORS, embezzlement by 229
DISCHARGE in cases of malicious injury 373
Of accused 41, 47
DISMISSAL, if prosecutor does not appear 88
By a recorder, of party accused 459–60, 554
Order of, on information or complaint 113
Certificate of 114
Warrant of distress for costs upon an order for, &c. 119
Form of order of, of an information or complaint 123
Form of certificate of 124
Form of order for, in cases of distresses for small penalties 203
DISTILLERIES and breweries, name to be on 241
Hindering inspection of 242
See Nuisances 892
Working without notice 243
Without license 241
DISTRESS not to be levied before service of order 89
Proceeding in cases of, if sufficient be not found 91
When warrant of, issued, defendant may be bailed till, &c. 92
Where only, can be made 91
If sufficient, cannot be found 91

PAGE

Distress, if, would be ruinous 92
Cannot be made if fine and costs are paid or tendered 96
Warrant of, commitment for want of 117, 120, 122
Warrant of, for costs upon an order for dismissal, &c. 119
Warrant of, for costs of an appeal, &c. 121
Costs of 211
For small penalties 211
Time of sale 211
Extortion in cases of 212
How penalty to be levied 212
Commitment 212
Justices not to make orders against landlords in cases of 213
Party levying, to give copy of charges to party distrained 213
Order and judgment for complainant 213
Order for dismissal in 213
Schedule of costs and charges in 213
Return of warrant in 214
In, fraudulent removal of goods distrainable for rent 214
Costs may be recovered by 90
In default of sufficient, Justices may commit defendant 93
Costs may be recovered by, upon prosecutor, in certain cases 95
One Justice may issue warrant of 97
Conviction for a penalty to be levied by 109
Order for payment of money to be levied by 111
Imprisonment in default of 111
Warrant of, upon conviction for a penalty 114
Warrant of, *see* Assault 148
Warrant of, upon order for the payment of money 115
Warrant of, endorsement in backing a 116
Warrant of, constable's return to a 116
Disturbance of public worship 216
Disturbers of schools, how punished 486
Division Court, assault on bailiff, &c., of 152
Offences by officers of 446
Division, territorial, meaning of 101
Fences 252–8
Dock-yards, &c., arson of 144
Documents, falsifying, or stealing election 228
Dogs, mischievous, *see* Nuisances 391
Worrying sheep, may be killed 501
Owners of, worrying sheep, may be summoned 501
That have worried sheep, may be destroyed by order of Justice 501
Not necessary to prove knowledge of propensity of 502
Defence for killing, that have worried sheep 502
Drill, illegal 216
Driver of vehicles, penalty if, intoxicated 321

PAGE

DRIVING fast over bridges 822, 823
DRUNKENNESS 218
Crimes committed through, punishable 470
DUCKS, geese, swans, &c., time for killing 302
DUELLING, *see* Murder 387
DUTIES of constables 186–90
Of constables in cases of arrest 35
Of coroners 49
Of justices of the peace 27, 69
DYING declaration, *see* Evidence 591

E.

EATING or victualling houses, licensing of 356
EGGS of certain birds, wild fowl, &c., not to be taken 302
For scientific purposes, permission to obtain 305
ELECTIONS, offences relating to 219
False personation at 219
Penalty on unqualified persons voting 219
Penalty on persons voting more than once at same election 219
Penalty for fraudulently conveying lands in order to give a vote ... 220
Keeping of the peace at 220
When special constables to be sworn in at 221
Returning officer at, may demand the surrender of all arms 221
Batteries during, to be deemed aggravated assaults 221
Entertainment not to be given to electors at 221
No stranger to come armed into any parish, &c., while the poll is open 222
Party ensigns, flags, badges, &c., prohibited at 222
Punishment relating to 222
Taverns to be closed during 223
Stealing or falsifying, documents 223
Abettors 224
How penalties recoverable 224
Stealing, &c., writs, &c., of municipal election 224
Of school trustees, *see* Schools, offences relating to 484, 487
EMBEZZLEMENT, definition of 225
By clerks, &c. 225
Misapplication by agents, &c. 226
Factors pledging goods entrusted to them 227
By trustees 228
By bankers, &c. 229
By attorneys 229
By directors 229
Punishment of 230
Evidence of 230
Consent of attorney-general to indictments for 231
If offence amounts to larceny 231

PAGE

EMBEZZLEMENT, jurisdiction in cases of ... 231
Trustee, meaning of term ... 231
Fraudulent receipts by warehousemen ... 232
By municipal officers ... 233
By revenue officers ... 234
By officers of savings' banks ... 234
By officers, &c., of charitable associations ... 235
Statute of Frauds extended to contracts for goods to be delivered at a future time ... 236
On indictment for, person may be convicted of larceny ... 236
On indictment for larceny, party may be convicted of embezzlement 236
Party tried for, or larceny, not to be tried again on same facts ... 236
Description of money in cases of ... 237
By officer of Post Office Department ... 418
EMBRACERY ... 237
ENDORSEMENT in backing a warrant of distress ... 116
Of warrant, when taken into another jurisdiction ... 74
Of warrant, how performed ... 74
Of warrant, its effects ... 74
ENGINES, Railway, to have bells, &c. ... 465
ENLISTMENT, Foreign ... 272
ENSIGNS, flags, &c., party, at elections, prohibited ... 222
ENTERTAINMENT, during elections, not to be furnished to electors ... 221
ENTICING to desert ... 211
ENTRY and Detainer, forcible ... 271, 272
ERROR, clerical, corrected ... 134
ESCAPE of a Prisoner ... 421–2
ESTREAT ... 237
Of recognizance ... 238, 241
ESTREAT, recognizance and ... 583
EVIDENCE, definition of ... 585
Sufficient ... 585
Attendance of witnesses ... 585
Who may be bound by recognizance to give ... 585
Competency of witnesses ... 586
Public documents ... 586
Want of religious principles ... 586
Want of understanding ... 587
Affirmations by Quakers, Menonists, Tunkers, &c. ... 587
Affirmations by Quakers, Menonists, Tunkers, &c., who may administer ... 587
Rules respecting ... 587
Should be confined to the points in issue ... 587
Best evidence to be produced ... 588
Secondary ... 588
Presumptions ... 590

PAGE

EVIDENCE, hearsay ... 591
Admissions and confessions ... 591
Examination of witnesses ... 592
Disobedience of witnesses ... 592
Leading questions ... 593
Adverse witnesses ... 593
Cross-examination ... 593
What questions witness compelled to answer ... 594
Impeaching credit of witnesses ... 594
Commitment of a witness for refusing to give ... 108
If insufficient, party to be discharged ... 47
If sufficient to commit, party to be bailed or committed, according to circumstances ... 43, 47
If not sufficient, and crime be committed in another division ... 43
Recognizance to prosecute or give ... 59
Warrant of commitment of witness, for refusing to give ... 58
Power of Justices to summons witnesses to appear and give ... 76
After hearing, Justice to determine the matter ... 85
In cases of embezzlement ... 230
Respecting money, in cases of embezzlement ... 237
Refusing to give, in offences against the Excise Act ... 245
What is, of rape ... 448
Who competent to give, under the Excise Act ... 244
EXAMINATION of witnesses, as to the ... 9, 37, 43
May be given in evidence, in certain cases ... 39
Recognizance of bail, instead of a remand on adjournment of ... 63
EXCISE: Interpretation ... 241
Distilling without license ... 241
Name to be on distilleries, &c. ... 241
Brewing without license ... 241
Neglecting or falsifying entries in books ... 242
Neglecting accounts, &c ... 242
Hindering inspection of premises, &c ... 242
Working, without notice ... 243
Neglect, &c., to furnish means for inspection ... 243
Search warrant ... 243
Penalty for neglecting to render accounts ... 244
Penalties, how recoverable ... 244
Evidence ... 244
Evidence, refusing to give ... 245
Invalid seizures ... 245
EXECUTION, questions as to, *see* Assault ... 149
EXEMPTION, if negatived, need not be moved ... 86
EXPENSES of removing prisoner to proper county ... 44
EX PARTE, Justice may proceed, if summons not obeyed ... 72
EXPLANATIONS to be made to party accused ... 39

PAGE

EXPLOSIVE SUBSTANCES, inflicting bodily injury by 245
Attempts to inflict bodily injury by 246
Possessing explosive substances with illegal intent 246
Destroying buildings with 246
Attempting to destroy buildings with 247
Duties of Justices respecting 247
By-laws regulating storage of 249
In police villages, regulations respecting 249
EXTORTION, *see* Distresses for Small Penalties 212
By public officers 444, 447
EXTRADITION of fugitive criminals from British North American Provinces 249
Of offenders from the United States 250

F.

FACTORS pledging goods entrusted to them, *see* Embezzlement 227
FALSE accusations, to extort 534
FALSE light, maliciously exhibiting a 376
FALSE personation at elections 219
FALSE pretences 166-71
Obtaining alms or contributions by 549
On charge of, may be convicted of larceny 167
What offences are within statutes 169
FATHER of illegitimate children liable for their support 531
FEES, as to payment of clerks' 97
Penalty for clerks receiving greater, than entitled to 98
What, clerks may demand 98
Receivable by Justices of the Peace or their clerks 203
Not expressly provided for, *see* Costs 203
Not allowed to Justices or witnesses in certain cases 204
Of fence viewers 258
FELO DE SE (Self-felon), *see* Suicide 530
FELONY, attempt to commit, *see* Assault 149
Misprision of 181
Rescue of party charged with 469
Riot a, punishable by death 473
See Smuggling 499
Definition of 252
Conviction for misdemeanor on indictment for 414
FEMALES, abduction of, under sixteen 129
FENCES, repair of division 252
What constitutes a lawful 252
Division, not to be removed without notice 253
Cost of division 253
Water 253
Where lands divided by a river or creek 253
Ditches and water-courses 254

PAGE

FENCES, maliciously injuring or destroying ... 371
Viewing of, disbursements relating to ... 258
By-laws respecting ... 258
Et cetera, how amount payable by each party for repairs, &c., shall be ascertained ... 256
To be erected on bridges and at each side of railways ... 461-2
FENCE VIEWERS to decide disputes ... 254
Award of, to be in writing ... 254
Notice of disputes concerning fences to be given to ... 254
Attendance of, when required ... 254
Review of award of ... 255
Refusal of one party to carry out award of ... 255
Fees relating to ... 258
To appraise damage done by cattle ... 410
Penalties for neglect by ... 410
Decision of, against legality of fence, proceedings when ... 411
FERRIES, offences relating to ... 259
Interference with licensed ferrymen ... 259
Parties may keep boats for their own use ... 260
Commitment in default ... 259
Appeal ... 259
Evidence of title ... 260
FERRYMAN, interfering with licensed ... 259
FIGHT, Challenge to ... 165
Prize ... 423
See Affray ... 135
FIGHTING, Cock ... 171
FINES, time for payment of ... 15
And forfeitures, recovery of ... 319
And forfeitures, application of ... 320
On ministers, for neglecting to return certified lists of marriages ... 380
FIRES, &c., provisions relating to ... 260
In cities, towns and incorporated villages ... 260
In police villages ... 261
FISH, offences relating to ... 264
Rights of fishermen ... 264
Period for salmon fishing limited ... 266
Penalty for violation of act ... 266
Exception as to fly-fishing ... 256
Obstructing main channels of rivers ... 266
Fishways to be attached to dams ... 266
Killing speckled trout ... 267
Certain kinds of, not to be sold in the close season ... 267
Pound ... 267
Lime and drugs not to be used to catch ... 267
Penalties ... 267

PAGE

FISH, limitations of prosecutions ... 268
Delay between service and return of summons ... 268
Conviction on view ... 268
Defendant not resident in the province ... 268
Search ... 269
Application of fines and forfeitures ... 269
White-fish ... 269
Form of complaint ... 269
Form of summons to defendant ... 270
Form of subpœna ... 270
Form of conviction ... 270
Form of warrant of commitment ... 271
FISH AND OIL, offences relating to ... 262
Penalty on inspector of ... 262
Fraudulently branding ... 263
Penalty on inspector trading in ... 263
Distribution of fine ... 263
Limitation of time to sue for penalties ... 263
Imprisonment for non-payment ... 263
Recovery of penalties ... 264
FISHERMEN, rights of ... 264
FISHING on the Lord's day prohibited ... 424
FISHWAYS to be attached to dams ... 266
FIXTURES, stealing, *see* Larceny ... 351
FLAGS, ensigns, &c., party at elections, prohibited ... 222
FORCIBLE entry and detainer ... 271, 272
FOREIGN bills, &c., forgery of ... 281
Enlistment ... 272, 565–7, 567–70
Enlistment, information in, form of ... 570
Enlistment, conviction in cases of, form of ... 571
Enlistment, commitment in case of, form of ... 571
FORGERY, what is ... Note, 490
Of the great seal ... 275
Of the Governor's seal-at-arms ... 275
Of debentures ... 276, 288, 289
Of letters patent ... 277
Of transfers of stock ... 277
Of witness's name ... 278
Of notarial acts, &c. ... 278
See Bills ... 280
Possession of forged instruments ... 277
Of passenger tickets, &c. ... 282
Of postage stamps, &c. ... 282, 415
Forgeries abroad ... 283
Uttering forged instruments ... 284
Of trade marks, &c. ... 287

PAGE

FORGERY of seals of division courts ... 288
Of signatures to affidavits ... 288
Of railway debentures, &c. ... 289
Of railway debentures, &c., venue in cases of ... 289
Of seals, &c., of superior courts ... 289
Accessories in ... 289
Of customs documents ... 290
Of pawnbrokers' notes ... 290
Falsely personating bail, &c ... 279
5 Elizabeth, c. 14 ... 283
Trial of offenders and accessories in ... 285
Penalty of death for, superseded ... 276
Venue in cases of ... 289
Persons suspected of, how dealt with ... 430
FORGERS of pawnbrokers' notes, suspected, how dealt with ... 430
FORGING pawnbrokers' notes, &c ... 430
Marks, brands, &c., to defraud the customs ... 497
Stamps, &c., for marking weights and measures ... 554
Postage stamps, &c. ... 282, 415
FORMS: Information and complaint for an indictable offence ... 52
Warrant to apprehend a person charged with an indictable offence ... 52
Summons to a person charged with an indictable offence ... 52
Warrant when the summons is disobeyed ... 53
Information to obtain a search warrant ... 53
Search warrant ... 54
Certificate of indictment being found ... 54
Warrant to apprehend a person indicted ... 55
Warrant of commitment of a person indicted ... 55
Warrant to detain a person already in custody, &c. ... 56
Endorsement in backing a warrant ... 56
Summons to a witness ... 56
Warrant where a witness has not obeyed a summons ... 57
Warrant for a witness, in the first instance ... 57
Warrant of commitment of a witness for refusing to be sworn or give evidence ... 58
Depositions of witnesses ... 59
Statement of the accused ... 59
Recognizance to prosecute or give evidence ... 59
Notice of recognizance to be given to prosecutor and his witness ... 60
Commitment of a witness for refusing to enter into recognizance ... 61
Subsequent order to discharge the witness ... 62
Warrant remanding a prisoner ... 62
Recognizance of bail instead of remand, on adjournment of examination ... 63
Notice of recognizance to be given to the accused and his sureties ... 63
Certificate of non-appearance to be endorsed on recognizance ... 64

PAGE

FORMS: Recognizance of bail 65
Warrant to convey accused before a Justice of the county in which the offence was committed..... 64
Receipt to be given to constable by Justice of county in which the offence was committed..... 65
Notice of recognizance of bail to be given to accused and his bail... 66
Warrant of deliverance, on bail being given for a person already committed..... 66
Warrant of commitment..... 67
Gaoler's receipt to constable for prisoner, and Justice's order thereon 67
Certificate of dismissal of juvenile offenders 333
Conviction of juvenile offenders 336
Conviction for offences committed on the Lord's day 426
Informations for the peace and good behaviour..... 532
To be used under the laws relating to spirituous liquors 526-9
Summary conviction by a recorder or police magistrate 460
Summary conviction upon a plea of guilty 460
Certificate of dismissal..... 460
Return of convictions..... 471
Proclamation for rioters to disperse..... 474
Notice not to furnish certain persons with intoxicating liquors 528
Oath of residence to be taken by aliens..... 558
Oath of allegiance to be taken by aliens..... 559
Affidavit of attachment against absconding debtors 557
Warrant of attachment against absconding debtors 558
Commission of the peace 23
Conviction, &c., to be as in schedule 88
Where no special given 89
Schedule of valid..... 102, 127
In cases of distresses for small penalties 213
Declaration of voters for school Trustees..... 484, 488
Affirmation of Menonists, Tunkers, &c. 587
Certificate of dismissal in cases of juvenile offenders 333
Agreement with pound-keeper by party impounding cattle, &c..... 498
Conviction in cases of assault 152
Notice to be posted at bridges 321
Oath of qualification of Justices 561
Warrant of commitment under Fishery Act 271
Warrant of commitment under Foreign Enlistment Act 571
FORMAL conviction or order 12
FORTUNE-TELLING, how punishable, *see* Vagrants 548
FRAUDS, Statute of, extended to contracts for goods to be delivered, &c..... 236
FRAUDULENT Receipts by warehousemen..... 232
Removal of goods distrainable for rent 214
FRONTIER, outrages on the..... 574
Governor may order alien to leave the country, when, &c. 574

PAGE

FRONTIER, Disobedience of such order a misdemeanor 575
Disobedience, how punishable 575
Governor may issue warrant of removal 575
Provisoes 576
General summary of accusation to be given in writing to alien 576
Alien to have right of defence 576
Alien may be bailed by a judge of any superior court 577
Procedure when alien not sent out of province within specified time 577
Aliens under 14 years of age not affected by this act 577
Aliens five years resident in this province 577
Aliens fitting out expeditions, raids, &c., punishment of 577
Seizure of vessels freighted with munitions of war 578
Seizure of vessels, vehicles, &c., passing frontier 578
Officer seizing, afterwards to obtain warrant justifying detention ... 579
Owner or claimant of such property to file petition 380–2
Superior, circuit and county courts, have full jurisdiction 580
Where petition not granted, property may be restored on security for double the value being given that it will not be used illegally 580
Venue in cases under this act 581
Warrant to search for and seize munitions of war, &c., may be issued on information on oath 581
Persons executing warrant may force entrance into houses, &c., if denied 581
Nothing in this act to interfere with law respecting writ of *Habeas Corpus* 582
"Arms," meaning of term 582
"Munitions of war," signification of 582
Act to remain in force one year 583
FUGITIVE Criminals, Extradition of, from the British N. A. Provinces 249
From the United States 250

G.

GAMBLING, municipalities may pass by-laws against 297
GAMES and amusements on the Lord's day prohibited 424
GAME-LAWS, offences against the 301
Punishment of offences against the 303
Killing deer 301
Turkeys, grouse, &c. 301
Quail 302
Woodcock 302
Trapping wild-fowl 302
Trapping deer 302
Having game in possession during the close season 302
Eggs not to be taken 302
Confiscated game 303
Traps, &c., may be destroyed 303

PAGE

GAME-LAWS, beaver, musk-rat, &c. ... 303
Destruction of insectivorous birds prohibited ... 303
Penalties ... 304
GAMING ... 295
Penalty for making lotteries ... 295
Buying tickets, &c. ... 296
Sales, &c., void ... 296
Purchaser without notice ... 296
Committal for non-payment of penalties ... 296
Foreign lotteries ... 297
Interpretation ... 297
Appeals ... 297
Division of property in common ... 297
By-laws against ... 297
See Vagrants ... 549
GAOLS, &c., regulations respecting ... 291–5
And court-houses ... 291
Who to have the custody of ... 295
GAOLER's receipt to constable for prisoner ... 67
Penalty may be paid, to ... 99
To pay penalty to clerk ... 99
To keep an account of all moneys received by him ... 100
GAS-WORKS, *see* Nuisances ... 392
GATES, &c., prostrating ... 370
GATE-KEEPERS not compellable to give change for more than one dollar ... 312
GEESE, swans, ducks, &c., time for killing ... 302
GENERAL, Attorney, consent of, to indictment for embezzlement ... 231
GENERAL form of information upon oath ... 123
Form of notice of appeal against a conviction ... 124
GENERAL Quarter Sessions of the Peace, the Court of ... 298
Summonsing the Court of ... 298
Former commissions and courts confirmed ... 299
Outlawry ... 299
When Courts to be held ... 299
Where Courts to be held ... 299
Chairman ... 299
Attending orders of Court ... 300
Jurisdiction of Court ... 300
Audit of county expenses ... 300
GOOD BEHAVIOUR, sureties of the peace and ... 531
GOODS, Justice may commit where no ... 92
Fraudulent removal of, distrainable for rent ... 214
Maliciously destroying ... 368
GOVERNOR may declare Riot Act in force near public works ... 478
GOVERNOR's Seal-at-Arms, forging of the ... 275
GRAIN, assaulting persons dealing in, *see* Assault ... 149
Standard weights of different kinds of ... 553

PAGE

GRAVES, protection of ... 210
GREAT Seal, forging of ... 275
GUESTS at an inn, *see* Larceny ... 344
GUNS, fire-arms, &c., discharging of, *see* Nuisances ... 392
GUNPOWDER, cities, &c., may pass by-laws regulating storage of ... 249
Regulations respecting the sale of, in police villages ... 249
GUN or Pistol, presenting loaded ... 145

H.

HABEAS CORPUS ... 30, 582
HANDCUFFING prisoner ... 191
HARBOURS, &c., municipalities may pass by-laws for regulation of ... 305
HARD labour ... 11
Sentence to penitentiary to include ... 306
The court may order ... 306
May be imposed by Justices ... 306
HAWKERS, auctioneers, &c., licensing of ... 356
HEALTH, public ... 435–7
Officers, councils of municipalities to be ... 437
Officers may enter and examine premises ... 435
HEARING, proceedings on ... 84
May be adjourned ... 87
May proceed in absence of either party ... 88
Directions as to ... 7
Warrant of committal during adjournment of the ... 104
HEARSAY, *see* Evidence ... 591
HEIRESS, abduction of, in Upper Canada ... 128
HIGH constable ... 190
HIGH treason, outlawry in ... 396
HIGHWAYS, offences relating to ... 307
What is a highway ... 307
Use of public roads in cities and towns ... 307
The corporation to repair, &c. ... 307
Neglect ... 308
Tolls, how fixed, &c. ... 308
Tolls, when to be collected ... 308
Tolls, limitation of ... 308
Tolls, rate of ... 309
Tolls, extra ... 309
Tolls on bridges ... 309
Tolls, when mail coaches, &c., to pay ... 314
Tolls not to be collected till repairs made ... 311
Tolls, taking more than proper ... 312
Tolls, exemptions from ... 312
Tolls, persons going to and returning from divine service free from, 312
Tolls, vehicles laden with manure free from, with certain exceptions, 314
Tolls, how payment of, enforced ... 315

PAGE

HIGHWAYS, Tolls, penalty for non-payment of ... 315
Tolls, sale of things seized for ... 315
Tolls, avoiding payment of ... 316
Tolls, penalty for allowing persons to pass through lands to avoid payment of ... 316
Tolls, penalty for leaving horses on the road to avoid payment of ... 316
Tolls, penalty on persons falsely claiming exemption from ... 316
Tolls, check-gates, &c ... 310
Roads intersecting ... 309
Vehicles crossing a road ... 310, 313
Company to repair road ... 310
Engineer to examine the road ... 310
Notice to repair ... 311
Penalty for not repairing ... 312, 323
As to money change ... 312
Cattle, &c., crossing road ... 313
Loaded vehicles ... 321
Act not to apply to bridges ... 314
Mail coaches ... 314
As to roads leased before June 14th, 1853 ... 314
Penalty on persons injuring roads, &c. ... 316–8
Company not to impede graded portions of road ... 318
Application of penalties ... 319
Recovering of fines and forfeitures ... 319
Arrest of party not appearing ... 319
Application of fines, &c ... 320
Limitation of actions ... 320
Officers, &c., may be witnesses ... 320
Carriages meeting on highways ... 320
Carriages overtaken ... 320
Carriage, penalty if driver of, intoxicated ... 321
Racing forbidden ... 321
Sleigh horses to have bells ... 321
Notice to be posted at bridges ... 321
Penalty on persons defacing such notice ... 321
Fast driving over bridges ... 321, 323
General penalties ... 322
Statute labour ... 322
Pits and precipices ... 323
In cities, townships, towns, and incorporated villages ... 323
General power of counties respecting ... 323
Certain powers of Justices in Sessions transferred ... 324
Railways not to pass along ... 461
How railways may cross ... 461
HOMICIDE, classified ... 325
Justifiable ... 325

PAGE

HOMICIDE, excusable ... 326
Felonious ... 326
In self-defence ... 326
Prize fighting ... 326
HOP-BINDS, &c., destroying plants ... 368
HORSE STEALING, *see* Larceny ... 347
HOTELS, *see* Inns and Innkeepers ... 329
HOUSES of Correction, regulations respecting ... 291
Of Correction, cities and towns may establish ... 294
Of industry and refuge, regulations respecting ... 291–3
HUNTING on the Lord's-day prohibited ... 424
HUSBAND and Wife, *see* Larceny ... 342

I.

IDIOTS, lunatics, &c., not responsible for crime ... 472
IDLE and disorderly persons, *see* Vagrants ... 549
IGNORANCE, casualty, misfortune, &c., crimes committed through ... 470
ILLEGAL drill ... 216
ILLEGITIMATE children, support of ... 531
IMPARLANCE, defendant in misdemeanor not allowed to put off trial by ... 386
IMPEDING shipwrecked persons, *see* Assault ... 150
IMPERIAL law in criminal cases ... 128
IMPRISONMENT, consecutive ... 19, 94, 329
When, for subsequent offence to commence at, &c. ... 94
In default of sufficient distress ... 109
In default of payment ... 110, 112
Conviction, when the punishment is by ... 110
In default of distress ... 111
Order for any matter, where disobeying it is punishable with ... 113
In the penitentiary ... 327
Felony not punishable with death, how punishable ... 327
When length of imprisonment in discretion of court ... 327
Elsewhere ... 328
From what period imprisonment is to be reckoned ... 328
Transportation abolished ... 328
Certain assaults punishable with ... 328
INDIANS not to be prosecuted for profanation of the Lord's-day ... 428
INDICTABLE Offences ... 9
Information and complaint for ... 52
Warrant to apprehend a person charged with ... 52
Examination of witnesses in ... 9
Summons in ... 69, 530
INDICTMENT, certificate of, being found ... 54
For embezzlement, party may be convicted of larceny, on an ... 236
INDIGENT WITNESSES, provision as to payment of ... 584
INFANTS, crimes committed by ... 470

PAGE

INFANTS, abuse of 180
INFORMATION: How, should be taken 5
For one offence only 14, 80
For an indictable offence 52
To obtain a search warrant 53
Complaint or, to be on oath 80
Complaint or, time for making 80
Complaint or, time for hearing 81
Complaint or, when to be in writing and on oath 80, 81, 52
Complaint or, order of dismissal of 113
Complaint or, objections to, not allowed 81, 71
Complaint or, proceedings at the hearing of 84
Complaint or, receivable by one Justice when tried by two 97
To compel finding sureties for the peace, form of 683
If dismissed, how costs may be recovered 95
Summons to defendant on an 108
Warrant of distress for costs, upon an order for dismissal of an, or complaint 119
General form of, upon oath 123
Form of order of dismissal of, or complaint 123
INFORMER, death of the 201
INJURIES, malicious 364, 374
Municipalities may pass by-laws against malicious, to timber-slides, dams, &c. 527
INNS, disorderly, *see* Nuisances 390
And innkeepers 329
What is an inn 329
Tavern-keepers and emigrants, list of prices 329
Tavern-keepers to have no lien on effects of emigrants for more than five dollars 330
Where prosecutions shall be brought 330
No appeal 331
Taverns, &c., officers or constables may enter when authorized 524
INNKEEPERS, &c., liability of, in cases of assault by, or death of drunkard 521
Not to sell intoxicating liquors to certain parties when notified to that effect 522-3
And inns 329
INOCULATION, penalty against 331
INSANE Prisoners, enquiry as to, *see* Lunatics 359-60
INSOLVENCY or bankruptcy 149
INSPECTION of premises for purposes of excise, *see* Excise 242
INSPECTORS of Police, &c., powers of 49
Et cetera, may act alone 100
Obstructing railway, how punishable 467
Of weights and measures, municipalities may appoint 555
Of weights and measures, duties of 553, 555

PAGE

INTERMENT of dead bodies ... 210
INTOXICATING liquors, municipal councils may prohibit the sale of ... 510
INTOXICATION of railway engineers or conductors, a misdemeanor ... 465
INVOICES, using false, with intention to defraud the revenue ... 494

J.

JOINT Tenants, *see* Larceny ... 342
JURISDICTION in cases for embezzlement ... 231
Of Justices respecting explosive substances ... 267
Of Justices in municipalities ... 331
JURORS' Fund, fines to form ... 399
JURY, appeals triable by ... 86
JUSTICE of the Peace, office of ... 2
Two classes of: 1. By commission ... 2
2. By virtue of holding some other office ... 2
Meaning of the term ... 2
Powers and duties of ... 2-5, 27, 69
Qualification of ... 4, 561
Protection of ... 21
Liability of ... 20
Not punishable for errors of judgment ... 20
Liable to actions ... 21
Interested ... 17
Interference with each other ... 11
Fees receivable by, or their clerks ... 203
Who are, by virtue of their office ... 382
Qualification of, in cities ... 382
Jurisdiction of, in cities ... 382
Penalty on ... 562
Limitation of actions against ... 562
Fines and penalties in actions against, to whom paid ... 563
JUSTICE'S Court, *see* Procedure of a Magistrate's Court ... 5
JUSTICES may summon witnesses ... 36
May remand accused ... 41
Signature to depositions ... 10, 38
Majority should decide ... 10
Gaoler's receipt to constable and justice's order, &c ... 67
To administer oath or affirmation ... 38
To bind over prosecutor and witnesses ... 40
To caution accused as to any statement he may make ... 38
To subscribe to recognizance ... 40
To furnish constable with a receipt or certificate ... 45
In case of misdemeanor, one may bail ... 45
Receipt to be given to constable by, for county in which the offence was committed ... 65
May issue summons when information laid ... 69

	PAGE
JUSTICES may issue warrant if summons not obeyed	71
Not obliged in certain cases to give summons	70
May proceed *ex parte* if summons not obeyed	72
When, may issue his warrant in first instance	72
May convict party if he admit the truth	84
After hearing evidence, to determine the matter	85
May adjourn hearing of any case, &c.	87
One, may receive information and issue summons in all cases	97
One, may compel witness to attend, and issue distress warrant	97
Acting before or after conviction need not be a convicting Justice	97
To issue warrant of distress in cases where pecuniary penalty, &c.	91
May commit, where no goods	92
May commit, in default of sufficient distress	93
Death of, granting a warrant of commitment, &c	201
Costs of, where complaint is dismissed	205
In case of felony, two may bail, if evidence not sufficient to commit	45
Duty of, when party committed wishes to be bailed	50
Coroners and, penalty on	51
Power of, to summon witnesses to attend and give evidence	76
When two or more are required to act, must be present together during hearing of case	97
JUVENILE Offenders, persons of not more than sixteen years of age, &c., may be summarily convicted	333
Justices may dismiss complaint in certain cases	333
Form of certificate of dismissal	333
Release of party obtaining certificate	334
Case may be sent for trial if Justices think fit	334
Justices to give person charged the option of trial by jury	334
Justices may hear and determine	336
Compelling appearance	335
One Justice may remand or take bail	335
Condition of recognizance	335
Recognizance may be enlarged	335
Application of fines	335
Attendance of witnesses	336
Form of conviction	336
Conviction not to be quashed for defect of form	337
Conviction to be sent to clerks of the peace	337
No forfeiture, restitution	337
If property is not forthcoming	337
Recovery of penalties	338
Committal for non-payment	338
Expenses of prosecution, how to be paid	338
If there be no conviction	339
Amount of expenses, how ascertained and certified	339

PAGE

Juvenile Offenders: Orders of payment, how to be made, and upon whom 389
Protection of persons acting under this act 389

K.

Keeping the Peace at elections..... 220

L.

Land divided by rivers or creeks, *see* Fences..... 253
Penalty for fraudulently conveying, in order to give a vote at elections 220
Landlord and Tenant 213
Landmarks, removing or defacing 374
Larceny, if offence amounts to, party may be acquitted of misdemeanor .. 231
On indictment for embezzlement, party may be convicted of 236
On indictment for, party may be convicted of embezzlement 236
Party indicted for, may be convicted of false pretences 167
Definition of term 340
Of the taking 340
The taking must be felonious 341
Taking under a claim of right 341
Lost property 342
What property is the subject of larceny 342
Joint tenants 342
Husband and wife 342
A man may steal his own goods 342
Special ownership 343
The taking must be against the will of the owner 243
Of the absolute ownership of goods 344
Where the owner parts with the custody only 344
Servants 344
Guests at an inn 344
Where tho owner parts with the possession but not with the property 345
Where possession is obtained by fraud 345
Where possession is obtained without fraud by a trespass 345
Breaking bulk 345
Where the owner parts with both the property and the possession... 346
Of the intent 346
Simple, how punishable 347
Horse-stealing and cattle-stealing 347
Stealing securities 347
Stealing wills 348
Stealing title-deeds 348
Stealing or fraudulently taking records, &c. 349
Stealing from vessels wrecked, &c. 349
Stealing railway tickets, &c. 351
Stealing domestic animals 351
Stealing parts of buildings, fixtures, &c. 351

PAGE

LARCENY: Stealing trees, shrubs, vegetables, &c. ... 352
By clerks and servants ... 353
By bailees ... 354
Restoration of stolen goods ... 354
When restitution not to be made ... 354
Advertising for stolen property ... 354
Recorders and police magistrates may try certain cases of ... 452
LAW, reservation of points of ... 405
The criminal, of Upper Canada ... 128
Formal ... 4
LEADING QUESTIONS, *see* Evidence ... 592
LETTERS Patent, forgery of ... 277
Demanding money or goods, by threatening ... 534
Stealing ... 414
Opening ... 486
Et cetera, enclosing in newspapers ... 416
LETTER BAGS, opening ... 414
Stealing from ... 414
LIABILITY of Justices ... 20
LICENSE, Justices may, private lunatic asylums ... 362
Distilling without ... 241
Liquors in the original packages, may be sold without ... 504
Notice of, to be placed over doors of taverns, &c. ... 504
Of disorderly inns, may be suspended or annulled ... 505
Transfer of ... 504
Penalty or imprisonment for selling liquor without ... 525
LICENSES, shows, &c. ... 355
Billiard-tables ... 356
Victualling-houses ... 356
Auctioneers, hawkers, &c. ... 356
To sell liquor, police commissioners in cities may grant ... 502
Penalty for issuing contrary to law ... 503-4
Municipal councils may prohibit the issue of ... 510
LIGHT, maliciously exhibiting a false ... 367
LIMITATION of actions against Justices ... 357
Notice of action ... 357
As to summary proceedings ... 357
Of actions and prosecutions ... 357
LIQUORS, police commissioners in cities to grant licenses to sell ... 502
Spirituous, with respect to the sale of ... 502-520
LIST of prices to be posted in taverns, &c., frequented by emigrants ... 329
LOCK-UP Houses ... 292
LOST Property, *see* Larceny ... 342
LOTTERIES, penalty for making ... 295
Et cetera, sale by, void ... 296
Foreign ... 297

PAGE

LUNATIC Asylums, private, Justices may license 362
Private, Justices may appoint visitors of 363
LUNATIC, enquiry as to prisoner being 359
Enquiry as to prisoner becoming 360
LUNATICS, how bailable 358
Dangerous, to be confined by warrant 359
And their lands, how disposed of 360
Maintenance of 360
Destitute 361–2
Who deemed settled 362
How money for the support of to be paid 362
Idiots, &c., not responsible for crime 470

M.

MACHINERY, accidents from 363
Malicious destruction of, *see* Malicious Mischief 369
To prevent accidents from, guards, &c., to be erected 363
Justices of the Peace to examine mills, &c 363
Collector or Justice to deliver certificates of sufficiency of guards, &c. 363
Penalty for non-compliance with directions of collector or Justices .. 364
MADMAN, he who causes a, to commit a crime responsible 470
MAGAZINES, &c., arson of 144
MAGISTRATE, *see* Police Magistrate, Stipendiary Magistrate, &c. 100
Or officer, assaulting a, *see* Assault 150
MAGISTRATES, powers and duties of 2–5
County crown attorney to conduct proceedings before 563
County crown attorney to advise, when required 564
MAGISTRATE'S Court, procedure of 5–22
MAIL, delaying or obstructing the 416
Toll-gate keepers delaying the 417
Drunkenness of carrier of 417
Offences committed during transit of, where punishable 419
Coaches, &c., when to pay toll 314
MAIMING cattle 368
MALFEASANCE by public officers 444
MALICE defined, *see* Malicious Mischief 373
See Murder 387
MALICIOUS Mischief: Malicious injuries 366
Demolishing churches 367
Exhibiting a false light 367
Destroying parts of ships in distress 367
Destroying plants, hop-binds, &c. 368
Maiming cattle 368
Destroying goods 368
Destroying machinery 369
Breaking down the banks of canals, &c. 569

PAGE

MALICIOUS Mischief: Destroying bridges 370
Prostrating gates, &c. 370
Destroying ponds and dams 371
Destroying trees, plants, fruits, and vegetables 371
Destroying fences 371
Malicious damage in general 372
Injuring or obstructing railways, &c. 372
Enforcement of penalties 373
Discharge of offender 373
Removing or defacing landmarks 374
Destroying toll-gates 374
By-laws against malicious injuries 374
Malicious injuries to timber-slides, dams, &c. 537
MANSLAUGHTER, *see* Railways 467
See Homicide 326
Definition of 364
See Murder 388
Punishment for 394
MANURE, vehicles drawing, free from toll 313
MARRIAGE, solemnization of 379
Minister of any denomination may solemnize 379
Minister not to solemnize unless authorised by license or after publication of banns 379
No valid objection that it was not solemnized in a church or chapel.. 379
Minister to enter marriage in a book, and make return 379
In case of death of minister, successor to make return 380
Fines for neglecting to return certified list of 380
MARKETS, municipalities may pass by-laws regulating 375
MASKINONGE and other fish, time for catching 267
MASTERS, complaints against, by apprentices 383
Complaints by, against apprentices 383
MASTERS AND SERVANTS, offences by 572
Voluntary contract between 572
Verbal or written agreement between 572
Persons leaving employment 573
Limit of fines or imprisonment 573
Commitment in default 573
Where trial may take place 573
Non-payment of wages 574
MEANING of certain words 14
MEASURES, using unlawful weights and 552
MEDICAL Practitoners, penalty on for inoculating 331
MEETINGS, *see* Public Meetings 439–43
MEMORY, witness may refresh his, by referring to written instruments, &c. 592
MILITARY exercise or evolutions, illegally drilling to the practice of 216
Or volunteer force may be called out to quell a riot 476

PAGE

MILITARY expeditions, raids, &c., to foreign states, engaging in..... 577
MILITIA, classification of the 380
Exemptions 381
Military divisions 381
Enrolment..... 381
Calling out the..... 381
Justice of the Peace required to billet 381
Billeting allowance 381
No Justice, being an officer, to billet troops 381
Penalties, how recoverable 382
Bonds to the crown..... 382
Volunteer militia 382
Uniform..... 382
Volunteers destroying property 382
Persons buying or having in their possession arms of 383
Damaging targets, butts, &c. 383
MILL DAMS, millers to construct aprons to their.. 376
Construction of aprons 376
Penalties 377
In specific places 377
River Moira, aprons to dams on the..... 378
MINISTERS of any denomination may solemnize marriage..... 379
Not to solemnize marriage unless authorized by license, &c..... 379
To enter marriages in a book, and make return..... 379
In case of death of, successor to make return 380
To be fined for neglecting to return a certified list of marriages..... 380
MINK, beaver, muskrat, &c., when not to be taken..... 303
MINORS AND APPRENTICES: Definition of apprentice..... 383
Complaints by apprentices against masters..... 383
Complaints by masters against apprentices..... 383
Apprentice deserting his master's employment..... 384
How complaints may be heard 384
Limitation of proceedings..... 384
Penalty for harbouring absconding apprentice.. 385
Appeal 385
Jurisdiction..... 385
Application of fines..... 385
MINUTE of decision 19
Of conviction to be made..... 86
MISADVENTURE, *see* Manslaughter..... 365
See Homicide..... 326
MISDEMEANOR, abettors in..... 134
Definition of 385
Defendant not allowed to postpone trial by imparlance..... 386
Time may be allowed on cause shewn 386
Traverse abolished 386

PAGE

MISDEMEANOR, Delay of trial ... 386
Rescue of party charged with ... 469
Vexatious indictments for ... 546
MISPRISION of felony ... 181
MONEY, order for the payment of, to be levied by distress ... 111
Order for the payment of, and in default imprisonment ... 112
Warrant of distress upon an order for the payment of ... 105
Clerks and gaolers to keep an account of, received by them ... 100
Evidence respecting, in cases of embezzlement ... 237
Et cetera, stealing from the post-office ... 414
MORALS, public, offences against ... 437
MOTHER of illegitimate children to make affidavit in certain cases ... 531
MUNICIPAL Act, false declarations under the ... 401
Officers, embezzlement, &c., of books, documents, &c., by ... 233
Officers, offences against by-laws by ... 164
Election, stealing, &c., writs of ... 224
Councils of townships may pass by-laws for licensing taverns, &c. ... 503
Councils may prohibit sale of intoxicating liquors by by-law ... 510
MUNITIONS OF WAR intended for military operations in foreign countries, *see* Outrages on the Frontier ... 577
MURDER, definition of ... 387
Punishment of persons guilty of ... 388
Poisoning, &c., with intent to commit ... 388
Feloniously attempting to commit ... 388
Rescue of murderer ... 388
Rescue of party convicted of ... 470
See Homicide ... 325
See Manslaughter ... 365
Conviction for concealment of birth, on indictment for ... 183
MUSKRATS, beaver, mink, &c., when not to be taken ... 303
MUTINY ... 387

N.

NAME, commitment on refusal to give, *see* Cruelty to Animals ... 206
NATURALIZATION, certificate of, to be given to aliens ... 560
NAVIGATION, railways not to impede ... 468
NOISES, *see* Nuisances ... 392
NON-APPEARANCE, certificate of, to be endorsed on recognizance ... 64, 106
In cases of outlawry ... 396
NON-FEASANCE by public officers ... 441
NON-PAYMENT of costs, if party imprisoned for, in certain cases ... 96
Of wages, *see* Masters and Servants ... 576
NOTARIAL ACTS, forgery of ... 278
NOTICE of recognizance to be given to prosecutor and his witn ... 60, 106
Of recognizance to be given to accused and his sureties ... 63

PAGE

NOTICE of recognizance to be given to accused and his bail..... 66
Of recognizance to be given to defendant (appellant) and his sureties 125
Of appeal against a conviction, general form of..... 124
Of recognizance, form of, to be given to defendant..... 125
To be posted at bridges 321
Penalty for defacing, posted at bridges 321
NUISANCES, what are..... 389
Disorderly inns 390
Bawdy house or other disorderly house..... 390
Municipal councils may pass by-laws to suppress tippling houses, &c. 391
Mischievous dogs..... 391
Municipalities may pass by-laws for preventing certain..... 392

O.

OATH: Meaning of the word 403
Justices may administer, or affirmation 38
Complaint or information must be made upon..... 80
General form of information upon 123
Of constable 185, 186
Of residence, to be taken by aliens desirous of being naturalized..... 558
Of allegiance, to be taken by aliens desirous of being naturalized... 559
Of Justice, as to property qualification..... 561
Children capable of distinguishing between good and evil may be examined upon..... 387
Affirmation to be taken by Quakers, &c., in place of an 587
OBJECTION, none allowed for want of form..... 31, 71, 74
OBSERVATIONS, complainant or defendant not to make, &c..... 85
OBSTRUCTIONS to rivers, streams, &c., *see* Rivers and Streams 481
OFFENCE, how to be described, *see* Conviction..... 200
Imprisonment, when to commence, for subsequent..... 94
Information and complaint for an..... 52
OFFENCES, indictable..... 9
Warrant to apprehend a person charged with 52
Certain, not bailable except, &c. 46
Attempts to commit..... 152
Relating to coins 172
Compounding..... 181
Relating to dead bodies..... 210
OFFENDERS caught in the act 139
From the United States, extradition of..... 250
Juvenile..... 333
Discharge of, in prosecutions for malicious injuries..... 373
OFFICE of constable..... 190
Constable's oath of 185
OFFICERS, offences by 444–6
May be witnesses in actions respecting highways 320

PAGE

OIL, fish, and offences relating to 362–4
OPEN COURT, place where Justices take examinations not an, in certain cases 39
Place where Justices take examinations, when to be an..... 81
See Attorney..... 153
Recorder's Court to be an..... 458
ORDER, what an, is..... 18
To discharge witness, form of..... 62
To discharge witness, when general form to be used..... 89
Defendant to be served with copy of 89
Of dismissal, costs to be specified in..... 90
Police inspector, &c., to have power to preserve..... 100
For payment of money, to be levied by distress..... 111
For payment of money, and in default imprisonment..... 112
For any matter, where disobedience punishable with imprisonment.. 113
Of dismissal of an information or complaint 113
Of dismissal of an information or complaint, form of..... 123
Warrant of commitment on an order in the first instance..... 118
Warrant of distress for costs of an appeal against an..... 121
OUTLAWRY, Sessions have authority in..... 393
Capias or bench warrant..... 393
Capias or bench warrant, when returnable..... 394
If return, non est, writ of ejectment may be issued..... 394
How sheriff to proceed 394
Writ of proclamation 395
Return to writ 395
Non-appearance..... 396
In high treason, if party surrender..... 397
OUTRAGES on the frontier 574

P.

PALMISTRY, punishment of, *see* Vagrants..... 548
PAPERS, transmission of 16
PARTIES, if both appear, Justice to hear, &c. 83
PARTNERS, description of property of 75
PARTRIDGE, turkeys, &c., time for hunting 301
PARTY Badges, ensigns, flags, &c., at elections, prohibited..... 222
PASSENGER Tickets, &c., forgery of..... 282
PAWNBROKERS, forging notes of 290, 430
Definition of 428
To be licensed 428
Penalty for not taking out license 428
Only one shop allowed 428
To exhibit a sign 428
Penalty for not exhibiting a sign 429
Rates to be exhibited 429
Note to be given to the pawners 429

PAGE

PAWNBROKERS: Pawnbroker's fees ... 430
Penalty for fraudulently pawning the goods of others ... 430
Penalty, how applied ... 430
Suspected forgers of notes, how dealt with ... 430
Refusing to account for goods offered in pawn ... 431
If Justice suspects goods to have been stolen ... 431
Taking goods from journeymen ... 431
Proceedings by owners of goods illegally pawned ... 431
Goods found concealed ... 432
Refusal to restore goods pawned ... 432
Holder of note considered as owner of goods ... 433
Loss of note ... 433
When goods may be sold ... 433
Goods to be exposed before sale ... 433
Penalty for not describing goods ... 433
Disposal of surplus ... 433
Account of sales to be kept, which pawner may inspect ... 434
Refusal of inspection ... 434
Restrictions upon pawnbrokers ... 434
If goods lost or damaged ... 434
Bound to produce books, &c. ... 435
Limitation of prosecutions ... 435
No fee on summons ... 435
Appeal to sessions ... 435
Stay of prosecution ... 436
PAYMENT for liquor sold in contravention of the law to be void ... 509
PEACE, arrest for illegal breaches of the ... 141
Keeping the, at elections ... 220
And good behaviour, sureties for the ... 531–34
PECUNIARY Penalty, when Justice to issue warrant of distress in cases of ... 91
PEDLARS, &c., unlicensed, may be arrested as vagrants ... 549
PENALTY on Justices and coroners, in certain cases ... 51
Pecuniary, Justice to issue warrant of distress, where, &c. ... 91
On unqualified persons voting at elections ... 219
On payment of, distress not to be levied ... 96
For voting more than once at same election ... 219
For clerks receiving greater fees than entitled to ... 98
For fraudulently conveying lands in order to give a vote at elections ... 220
May be paid to the gaoler ... 99
Gaoler to pay to the clerk ... 99
To whom clerk is to pay ... 99
For preferring an unfounded complaint, *see* Distresses for Small Penalties ... 212
Conviction for a, to be levied by distress ... 109

PAGE

PENALTY, warrant of distress upon conviction for a 114
Warrant of commitment upon a conviction for a 117
For refusing to render account under Excise Act 244
For non-payment of tolls 315
For allowing persons to pass through land to avoid payment of toll 316
For leaving horses on road to avoid payment of toll..... 316
On persons falsely claiming exemption from toll 316
On road companies for not repairing road 312
On persons injuring roads, &c. 316–18
On drivers of vehicles, &c., if intoxicated 321
On persons injuring notices on bridges 321
On corporation for not repairing roads, streets, &c. 323
Against inoculation..... 331
For harbouring absconding apprentices 385
For selling poisons or other noxious things 413
For taking goods in pawn without being licensed 428
On pawnbroker for not exhibiting sign 429
For fraudulently pawning the goods of others 430
On pawnbrokers, for not describing goods offered for sale 433
On Justices, for not making return of convictions, &c. 471
For giving licenses to sell liquor contrary to law 503–4
For engaging in military expeditions against foreign countries 577
PENALTIES, to whom to be paid 99
Schedule of costs, &c., on distresses for small rents..... 213
For offences against the laws relating to intoxicating liquors .. 506, 525
For breaches of the Excise Laws, how recoverable 244
For breaches of the Game Laws 304
For offences against the laws relative to post-offices, how recoverable 420
For offences against the Highways' Act 322
For taking toll before repairs made 3, 11
For taking improper tolls 312
For non-payment of tolls 315
For injuring roads, &c. 317–18
Application of 319
Recovery of, in cases against juvenile offenders 338
Enforcement of, in prosecutions for malicious injuries..... 373
Under the Militia Act, how recoverable 382
Recovery and enforcement of, where cattle impounded 411
How recoverable in certain cases 399
Application of 411
Fines and forfeitures, application and recovery of..... 319–20
How to be appropriated..... 398
If more than one offender..... 398
Fines payable to treasurer..... 398
Fines payable to receiver-general 399

PAGE

PENALTIES, to form jurors' fund..... 399
PERJURY, definition of.....399, 403
Evidence of..... 400–403
Before surrogate courts and commissioners..... 400
Before division courts..... 400
False declarations under the Municipal Act..... 401
Out of Upper Canada..... 401
In matters concerning revenue..... 401
Form of indictment for 402
Subornation of..... 402
Oath, meaning of the word..... 403
In case of qualification of justice..... 404
PERSON, appearing on summons and refusing to be examined, may be committed 87
Apprehended in one division, on charge of offence committed in another, may be examined in former..... 43
PERSONATION, false, at elections..... 219
PETTY trespasses..... 404
Penalty..... 404
Arrest..... 405
Justices not to try titles to land. 405
PICKEREL and other fish, time for taking..... 267
PISTOL or loaded gun, presenting a, *see* Assault..... 145
PITS and precipices 323
PLANTS, maliciously destroying..... 368–371
POINTS of law, reservation of..... 405
Reservation of questions 405
Case to be stated..... 406
Power of superior court..... 406
Judgment and consequences..... 406
POISON and other noxious things..... 412
Restriction of sale 412
Penalty for selling..... 418
Feloniously administering 418
Maliciously administering, and endangering life..... 418
Maliciously administering, with intent to injure 418
Conviction for misdemeanor on indictment for felony..... 414
POISONING, with intent to commit murder..... 388
POLICE, powers of inspector of..... 49, 100
Inspector of, &c., may act alone..... 100
Inspector to have power to preserve order..... 100
Inspector may enforce execution of process..... 100
Commissioners in cities to grant licenses to sell liquors, &c..... 502
Clerk of..... 457
Magistrate may enforce execution of process..... 100
Magistrate may act alone..... 100

PAGE

POLICE to have power to preserve order ... 100
Villages, offences in ... 412
Trustees to sue for penalties ... 412
Offences by trustees of ... 446
Magistrates, *see* Recorders' Courts and ... 457–60
POLITICAL meetings, &c., on the Lord's day prohibited ... 426
PONDS, dams, &c., destroying ... 370
POSTAGE stamps, &c., forging of ... 282, 415
POST OFFICE, offences relating to ... 414
Stealing letters ... 414
Stealing money ... 414
Stealing from bags ... 414
Stealing, &c., printed matter ... 416
Stealing keys or locks used for mails ... 418
Opening letter bags ... 414
Opening letters ... 416
Forging stamps, &c ... 415
Enclosing letters in newspapers ... 416
Delaying the mail ... 416
Injuring bags ... 417
Drunkenness, &c., of mail carrier ... 417
Toll-gate keeper delaying mail ... 417
Contravention of regulations ... 417
Soliciting to commit offences against this act ... 417
Misdemeanor, how punishable ... 418
Accessories ... 418
Embezzlement ... 418
Criminal procedure ... 419
Offences committed during transit of mail ... 419
Where rivers, canals, &c., form boundaries ... 419
Aiders and abettors ... 419
Property, how laid in indictment ... 420
Penalties, how recoverable ... 420
Penalties, proviso with respect to ... 420
Who may be a witness ... 420
POUNDS AND POUNDKEEPERS ... 407
Regulations for the government of poundkeepers ... 407
Liability of owners of animals ... 407
What animals to be impounded ... 407
When pound not safe ... 408
Statement of demand to be made by poundkeeper ... 408
Form of agreement with poundkeeper by party impounding ... 408
Stray cattle distrained ... 408
If owner of cattle be known ... 408
If owner of cattle be unknown ... 408
Duty of township clerk ... 408

PAGE

POUNDS: If animals impounded are worth more than $10 ... 408
Sale of animals impounded ... 409
Notice of sale ... 409
Keeper to feed impounded cattle, and may recover pay therefor ... 409
Pound-keeper, liability of, for neglecting to feed animals impounded 410
Sale, how effected, and purchase money, how applied ... 410
Disputes, how determined ... 410
Fence-viewers to view and appraise damages ... 410
Fence-viewers, penalty for neglect by ... 410
Fence-viewers, proceedings where, decide against legality of fence ... 411
Penalties, recovery and enforcement of ... 411
Penalties, application of ... 411
POWER of Justice to summon witness to appear and give evidence ... 76
PRECEPT for summoning court of quarter sessions ... 298
PRESUMPTIONS, *see* Evidence ... 590
PRISON, meaning of ... 100
PRISONER, conveyance of, to gaol ... 47
Gaoler's receipt to constable for, and Justice's order ... 67
Warrant remanding a ... 62
Warrant for deliverance on bail being given for, already committed .. 66
Detaining, in custody ... 29, 56
Rescue of a ... 421
Escape of a ... 421
Entitled to copy of indictment ... 421
Entitled to copy of depositions ... 421
When demand or special order necessary for copies of depositions, &c. 422
Escape by party himself ... 422
If let go voluntarily, cannot be re-taken ... 422
Breaking open doors to re-take ... 423
Rescuing persons convicted of, or committed for a misdemeanor ... 423
Death of, by cruelty or neglect of gaoler, *see* Murder ... 388
PRIVY vaults, municipalities may pass by-laws regulating construction of .. 392
PRIZE fight, *see* Affray ... 135
Fighting unlawful, *see* Homicide ... 326
PROCEDURE of magistrates' courts ... 5
Against parties charged with cruelty to animals ... 207
PROCEEDINGS, in cases of summary, one Justice may issue summons, &c. 97
On the hearing of complaints, &c ... 84
PROCLAMATION for rioters to disperse, &c. ... 474
For rioters to disperse to be read by Justices, &c ... 474
If rioters do not disperse upon ... 474
Governor may by, prohibit sale of intoxicating liquors near public works ... 505
PROFANATION of the Lord's Day ... 423
Trade ... 423
Political meetings, tippling, &c ... 424

PAGE

PROFANATION of the Lord's day: Games and amusements 424
Hunting 424
Fishing 424
Bathing 424
Penalties 424
Sales and agreements 425
Procedure 425
Form of conviction 425
Conviction not void for want of form 426
Default, time, commitment 426
Limitation, evidence 426
Appeals 426
Return of conviction 427
Tender of amends, &c 427
Distribution of penalties 427
Indians excepted 428
PROFANE swearing, punishment for 438
PROPERTY of partners, description of 75
Meaning of, in cases of embezzlement 231
PROSECUTE, recognizance to, or give evidence 59
PROSECUTOR, costs may be recovered from, in certain cases 95
May be heard by counsel or attorney 82
Notice of recognizance to be given to, and his witness 60
Witness and, to be bound over by recognizance 40
A competent witness in certain cases 87
May be examined upon oath 87
If, does not appear, case may be dismissed 85
Costs recovered upon, by distress, if case dismissed 98
Costs recovered upon, and in default imprisonment 95
PROSTITUTE, constable may arrest common 107
Or concubine, to force against her will, a rape 448
Every common, behaving indecently, punishable as a vagrant 549
PROTECTION of Justices 21
In prosecutions arising under the liquor laws 510
Of sheep 501
PROVISO, if negatived, need not be proved 86
PUBLIC HEALTH: Members of municipal councils and trustees of police villages to be health officers 437
Councils of cities, towns and incorporated villages may pass by-laws protecting the 437
Health officers may enter and examine premises 435
If premises found unclean, may order proprietor to cleanse the same 436
Neglect or refusal to cleanse premises 436
Penalty 436
In cases of malignant diseases in crowded and unhealthy places 436

PAGE

PUBLIC MEETINGS, what may be deemed ... 439
Called by sheriff, &c. ... 439
Requisites to bring meeting within the protection of the law ... 439
Protection to private persons ... 440
Notice to be given by sheriff ... 440
Notice by Justices ... 441
Sheriff and Justices to attend meetings ... 441
Chairman to make proclamation ... 441
Chairman to remove disorderly persons ... 441
Chairman may call on Justices, constables, &c., for assistance ... 442
Justices may swear in special constables ... 442
Refusing to be sworn as constable ... 442
Justices may disarm persons attending meetings ... 442
Weapons may be returned ... 443
If weapons lost ... 443
Battery ... 443
No one armed to approach meeting ... 443
Persons lying in wait ... 443
Limitation of actions ... 444
PUBLIC MORALS, offences against ... 437
Municipal councils may pass by-laws for protection of ... 437
Profane swearing ... 438
PUBLIC OFFICERS, offences by ... 444
Mal-feasance ... 444
Non-feasance ... 444
Extortion ... 444, 447
Assessors ... 445
Trustee of police villages ... 446
Revenue officers ... 446
Division court officers, misconduct of ... 446
PUBLIC WORKS, Governor may declare Riot Act in force near ... 478
Sale of liquor near, prohibited ... 505
PUBLIC WORSHIP, disturbance of ... 216
PUNISHMENT: Conviction, when the, is by hard labour ... 11
Conviction, when the, is by imprisonment ... 110

Q.

QUAIL, time for killing ... 382
QUAKERS, Tunkers, &c., affirmation by ... 587
QUALIFICATION of justices ... 4, 561
Property qualification ... 561
Oath as to property qualification ... 561
Certificate of oath of qualification ... 561
Penalty on justice for acting without being qualified ... 562
Limitations of actions ... 562
Penalties to be paid to Receiver-General ... 562

PAGE

QUARTER SESSION OF THE PEACE, *see* General Quarter Sessions.. 298
Appeals from Recorder's Court, and..... 138
County crown attorneys to conduct business at..... 563
QUESTIONS, what, witness not bound to answer..... 594
Leading, *see* Evidence..... 592
QUESTIONS OF LAW, reservation of..... 405

R.

RACING on highways, prohibited..... 321
RAIDS, military expeditions, &c., from Canada against any foreign country, a misdemeanor..... 577
RAILWAY debentures, &c., forging of..... 289
Injuring or obstructing 372
Cars, &c., when required for the use of troops..... 382
RAILWAYS, offences relating to..... 461
Not to be carried along highways..... 461
How, may cross highways..... 461
Where they cross highways on a level, to have signboards 461
Fences to be erected along the sides of..... 462
Walking, riding, &c., along, prohibited..... 462
Obstructing, punishment for..... 462
Damaging. 462, 467
Not to impede navigation 466
Fines, how recoverable and applicable..... 463
Commitment..... 463
Appeal. 464
Offence to be a misdemeanor 464
Checks on parcels..... 464
Baggage cars not to be in rear of passenger cars..... 464
Engine to have bell, which must be rung at certain places 465
Intoxication of engineer or conductor, a misdemeanor 465
Railway ground to be kept in order..... 465
Trains, when passing through cities 466
Cattle, leaving, at large..... 466
Cattle may be impounded. 466
If by wilful injury to railway any one be killed, offence to be manslaughter..... 467
Committing injuries, stoppage, &c., how punishable..... 467
Obstructing inspectors..... 467
Contravention of by-laws, &c., by officers..... 468
Company may impose fine for contravention of by-laws..... 468
RAPE, taking the life of party attempting, justifiable homicide..... 325
Punishable by death. 447
Defined 447
Witness, party ravished an admissible 448
Must be against the will of the female 448

PAGE

RAPE, to force a prostitute or concubine, is a 448
Cannot be committed by a man upon his own wife..... 448
Evidence of what is a..... 448
Assault with intent to commit 151
Threats to accuse of an assault to commit 535
RECEIPT to constable by justice receiving prisoners from another division or county 65
Gaoler's, for prisoner and justice's order, &c..... 67
RECEIPTS, fraudulent by warehousemen 232
RECEIVING articles stolen from post, letters, &c 415
Stolen goods..... 449
When a misdemeanor 449
When felony..... 449
Punishment for 450
Venue in cases for 450
RECOGNIZANCE, to appear 13
Justices to bind over prosecutor and witnesses by 49
To be subscribed by justices..... 40
To be transmitted to the court in which trial is had..... 40
Witness refusing to enter into, may be committed..... 41
Justice may transmit to clerk of the peace 42
Commitment of witness for refusing to enter into..... 61
Certificate of non-appearance to be endorsed on..... 64
Of bail, on an adjournment of examination..... 63
Of bail..... 65
To prosecute or give evidence 59
Notice of, to prosecutor and his witness 60
Notice of, to be given to accused and his sureties..... 63
Notice of, to be given to accused and his bail 66
Where a defendant is discharged on, and fails to appear..... 75
In Upper Canada to be sent to the clerk of the peace..... 79
To proseeute indictment, note 29
In certain cases, to be certified by clerk of the peace 93
For appearance of defendant when case adjourned 105
Form of, to try the appeal, &c..... 125
Form of notice of, to be given to defendants and sureties 125
Form of, for the sessions 126
Party entering into, to be liberated..... 136
To give evidence, who may be bound by..... 585
Estreat of (*see* Estreat, 238) 583
Condition of, in case of juvenile offenders..... 335
In case of juvenile offenders, may be enlarged. 336
Certificate of non-appearance endorsed on back of, and then forwarded to clerk of the peace 83
Entry in book with consent of witnesses, is sufficient at the time for recognizance..... 583

PAGE

RECOGNIZANCE, all crown witnesses to enter into ... 583
To be made out and served on witness afterwards ... 583
Who to enter into, for married women and children ... 583
In case of refusal of accomplice to obtain sureties to give evidence, he may be committed ... 584
In case of foreign enlistment, proceedings may be had against witnesses as well as offenders ... 584
In cases of appeal against conviction for offence against laws relating to spirituous liquors ... 537
To keep the peace, or for good behaviour, form of ... 533
Should be for a stated time ... 532
RECORDERS' COURTS and POLICE MAGISTRATES ... 451
Jurisdiction of Recorders' Courts ... 451
Recorders and police magistrates to be Justices of the Peace ... 451
Clerk of police ... 451
Time for holding recorders' courts ... 452
Costs ... 452
Expenses of recorders' courts ... 452
Recorder may, by consent of accused, dispose of cases in a summary way ... 453
Pleading ... 453
Punishment ... 454, 456
When summary trial not to be granted ... 454
Larcenies over one dollar ... 454
Plea of guilty ... 455
Defence ... 455
Compelling attendance ... 455
Service of summons ... 456
Remand of accused ... 457
Conviction, return of ... 458
Conviction, copy of ... 458
Conviction, effect of ... 459
Conviction, form of ... 460
Upon a plea of guilty, form of ... 460
No sentence or proceeding void for want of form, &c. ... 459
Restitution ... 458
Open court ... 458
Duties of Justices not affected ... 458
Dismissal ... 454
Dismissal, certificate of ... 459
Dismissal, certificate of, form of ... 460
Jurisdiction of police magistrates ... 459
Juvenile offenders ... 459
Payment and application of fines ... 459
Forms ... 460
Appeals from Recorders' Court and Quarter Sessions ... 138

PAGE

RECORDS, &c., stealing or fraudulently taking, *see* Larceny ... 349
REGULATIONS respecting the sale of gunpowder in police villages, &c ... 249
REFUSAL to adjudicate ... 17
To be sworn ... 87
RE-HEARING a case ... 15
RELIGIOUS Principle, persons not having any, not admissible as witnesses .. 586
REMAND, directions as to ... 9
Power of Justice to, accused ... 41
If for three days only, may be by verbal order ... 42
Recognizance of bail, instead of ... 63
Warrant of ... 62
Justices may remand prisoner for further examination ... 457
Warrant to remand a defendant when apprehended ... 108
RENT, fraudulent removal of goods distrainable for ... 214
RENTS and penalties, schedule of costs in cases of distress for small ... 213
RESCUE of a prisoner ... 421
Nature of offence ... 469
Proof of the custody of the party rescued ... 469
Of persons convicted of murder ... 389
Of persons committed for murder ... 423
RESPONSIBILITY for crime ... 470
Who are not responsible ... 470
In the case of infants ... 470
In the case of women ... 470
Lunatics, idiots, &c ... 470
Crimes committed through ignorance, casualty, &c ... 470
Drunkards responsible for crime ... 470
RESTITUTION, when not to be made, *see* Larceny ... 354
RESTORATION of stolen goods, *see* Larceny ... 354
RETURN, constable's, to a warrant of distress ... 116
Of warrant, *see* Distresses for Small Penalties ... 214
Of convictions ... 471
Form of ... 471
Penalty for not making ... 471
Penalty for receiving more than legal amount of fees ... 471
Prosecution must be commenced within six months ... 471
Other necessary returns by Justice not dispensed with ... 471
RETURNING OFFICER at elections may demand the surrender of arms ... 221
REVENUE OFFICERS, offences by ... 446
Embezzlement by ... 284
REWARD, corruptly taking, to recover stolen goods ... 181
Offering, under promise of secrecy ... 181
RIGHTS of fishermen ... 269
RIGHT, claim of ... 16
RIOT, *see* Affray ... 135
RIOTS, routs and unlawful assemblies ... 473

PAGE

Riots, definition of a riot ... 473
Definition of a rout ... 473
An unlawful assembly ... 473
Riot a felony punishable by death ... 474
Form of proclamation ... 474
Justices, sheriffs, mayors, &c., to make proclamation during riot ... 474
If rioters do not disperse, how dealt with ... 475
The military or volunteer force may be called out if necessary ... 476
How volunteers may be called out ... 476
Suppressing riot; death of rioter ... 477
Opposing peace officers and others suppressing riot ... 477
Limitation of time for prosecution ... 477
Governor may declare Riot Act in force near public works ... 478
Possessing arms or weapons ... 478
Delivery of ... 479
Restitution ... 579
Seizure of ... 479
Penalty for concealing ... 479
Arrest of persons carrying ... 480
River Moira, aprons to dams on the ... 378
Rivers or creeks, land divided by, *see* Fences ... 253
And streams, offences relating to:—Floating timber ... 480
Obstructing rivers ... 481
Dams, &c., used as bridges, not obstructions ... 481
Where salmon, &c., do not abound, not included ... 481
As to obstructions not wilful ... 481
Fines, how to be recovered ... 481
Township councils may pass by-laws against obstructions to streams, &c. ... 482
Roads, Public, *see* Highways ... 307
Use of, in cities and towns ... 307
Corporation to keep in repair ... 307, 310
Intersecting ... 309
As to, leased before June 14, 1853 ... 314
Penalty on persons injuring ... 366
Engineer to examine ... 311
Notice to repair ... 311
Company not te impede graded portions of ... 318
Rob, assault with intent to ... 151
Robbery, definition of ... 482
When capital ... 483
When not capital ... 483
Assault with intent to commit ... 483
Forcibly taking money ... 483
And assault ... 483
Rogues and vagabonds, *see* Vagrants ... 548

PAGE
... 349
.... 249
.... 17
.... 37
.... 15
es.. 586
.... 9
.... 41
.... 42
.... 63
.... 62
..... 457
..... 108
..... 214
..... 213
..... 421
..... 469
..... 469
..... 389
..... 423
..... 470
..... 470
..... 470
..... 470
..... 470
..... 470
..... 470
..... 354
..... 354
..... 116
..... 214
..... 471
..... 471
..... 471
..... 471
..... 471
..... 471
..... 221
..... 446
..... 234
..... 181
..... 181
..... 269
..... 16
..... 135
..... 473

PAGE

ROPE-YARDS, arson of 144
ROUTS, *see* Riots, &c. 473

S.

SAFE Custody, warrant of committal for 104
SALE, time of, in distresses for small penalties 211
Of animals impounded 409–10
SALES and agreements on the Lord's-day, illegal 425
SALMON Fishing, period for 266
Trout or other fish, artificial propagation of 264
Trout and other fish, time for catching 267
SAVINGS' Banks, embezzlement by officers of 234
SCHEDULES 103–127
SCHEDULE, forms of, to be valid 102
Of costs, &c., on distresses for small rents and penalties 213
SCHOOL Auditors and their duties 488
Masters and teachers, penalty for false returns and false registers, by 486
Masters, penalty on, for refusing information to auditors 488
Non-compliance by, with award of arbitrators 488
SCHOOLS: Offences relating to 484
Challenging voters 484
Declaration of voter 484, 488
Penalty for false declaration 484
Refusing to serve as trustee 484
Penalty on secretary-treasurer for witholding books, &c. 484
Judge of county court may order production of books, &c. 485
Judge of county court to hear case 485
Non-compliance with Judge's order 485
Discharge of party upon production of books, &c. 485
Other remedy not affected 485
Personal responsibility 485
Penalty for false returns and registers 486
Disturbers of schools, how punished 486
How penalties recoverable 487
Penalty on teacher for refusing to deliver up school register, &c. ... 487
Who may vote 487
Auditors 488
Penalties on trustees for refusing information 488
Non-compliance by Justices with award 488
Declaration of Justice, and fine for not making 489
Penalty on chairman for neglect 489
SCHOOL-TEACHER, penalty on, for keeping false register or making false return 486
Penalty on, for refusing to deliver up school property 487
SCHOOL-TRUSTEE, party elected as, refusing to serve 404
Declaration of, and penalty for not making 489

PAGE

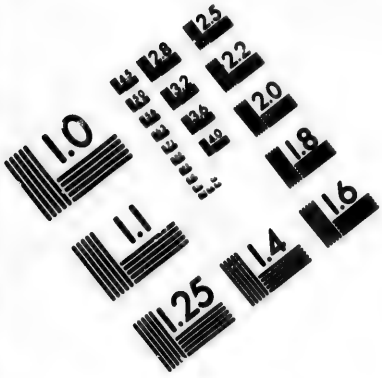
SEAL to be to warrant ... 71
Great, forgery of ... 275
At-arms, Governor's, forgery of ... 289
SEALS of Division Courts, forgery of ... 289
Of Surrogate Court, forgery of ... 289
SEAMEN, assaulting, *see* Assault ... 149
SEARCH Warrant ... 31, 54
Information to obtain a ... 53
Where illegal brewing or distilling suspected ... 243
Where suspicion exists that liquors intended for sale, &c., are concealed ... 507
Under what circumstances Justices may grant ... 489
SECRETARY-TREASURER of school trustees, penalty on, for not delivering up books, &c. ... 484
SECURITIES, stealing, *see* Larceny ... 347
SEIZURES, invalid, under the Excise Act ... 245
SELF-DEFENCE, *see* Assault ... 146
SELF-FELON (*Felo de se*), *see* Suicide ... 530
SERVANTS, *see* Larceny ... 344, 353
Masters and, offences by ... 572
SERVICE of summons ... 15
SESSIONS, form of recognizance for the ... 126
Appeals from quarter, and recorder's court ... 138
SHEEP, binding, *see* Cruelty to Animals ... 206
Protection of ... 501
Dogs worrying, may be destroyed ... 501
Owners of dogs may be summoned ... 501
Proceedings, how regulated ... 501
Justice may order dog to be destroyed ... 501
Conviction no bar to action against owner of dog ... 501
Not necessary to prove knowledge of propensity ... 502
Defence for killing a dog ... 502
SHIPS or vessels of war, arson of ... 144
Maliciously destroying parts of, in distress ... 367
SHIPWRECKED persons, impeding, *see* Assault ... 150
SHOOTING, cutting, wounding, &c., maliciously ... 529
SHOPS, liquor not to be drunk in premises having shop licenses ... 504
SHOWS, &c., licensing of ... 355
SIGNATURES to affidavits, forgery of ... 288
SIGN-BOARDS, municipalities may pass by-laws for preventing defacing of ... 375
SLANDER and libel, evidence ... 490
Averment ... 490
Apology by defendant ... 490
Amends by defendant ... 491
Extortion by threats to publish a libel ... 441
Publication of false libel ... 492

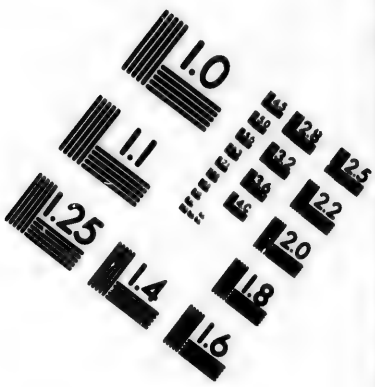
PAGE

SLANDER, publishing defamatory libel ... 492
Truth, as a plea ... 492
Publication without authority ... 492
Costs, and how recoverable ... 493
SLAUGHTER-HOUSES, *see* Nuisances ... 392
SLEIGH HORSES to have bells ... 321
SMUGGLING ... 494
Using false invoices ... 494
Offering for sale goods pretended to be smuggled ... 494
Harbouring smuggled goods ... 495
Company of persons found with smuggled goods ... 495
Hiring persons to assist in smuggling ... 495
Fraudulently concealing or removing warehoused goods ... 495
Fraudulently opening warehouse ... 495
Fraudulently altering marks ... 496
Forfeiture of vessels assisting to land smuggled goods ... 496
Vessels hovering ... 496
Smuggled goods stopped on suspicion ... 496
Penalty on police officer for neglecting to secure such goods ... 497
Forging marks, brands, &c. ... 497
Counterfeiting or using counterfeited papers ... 498
Officers for the prevention of smuggling, and their duties ... 498
Persons refusing to stop or to assist officers ... 499
Appeals ... 499
Felonies: removing goods seized ... 499
Assaulting, &c., officers ... 500
Firing at vessels ... 500
Wounding officers, &c. ... 500
Having smuggled goods, &c., and being armed, &c. ... 500
Destroying vessels, goods, &c. ... 500
SOLITARY CONFINEMENT, *see* Hard Labour ... 306
SPECIAL Constables, appointment of ... 185
Oath of ... 1 6
At elections, when to be sworn ... 221
At public meetings ... 442
SPECKLED TROUT, time for killing ... 267
SPIRITUOUS LIQUORS: Police commissioners in cities to grant licenses to sell ... 502
Number and accommodation of taverns ... 503
Penalty for issuing licenses contrary to law ... 503
Municipal councils of townships, &c., may pass by-laws for licensing, &c., taverns ... 503
Condition precedent ... 503
Accommodation required, and exception ... 503
Original packages of liquor may be sold without license ... 504
Notice of license to be placed over doors of taverns, &c. ... 504
Liquor not to be drunk in shops ... 504

PAGE

SPIRITUOUS LIQUORS: Transfer of license ... 504
License of disorderly inns may be suspended or annulled ... 505
Sale of liquors near public works prohibited ... 505
Penalty for selling liquors near public works ... 506
Agents selling liquor for principals ... 506, 510
Jurisdiction of mayors, justices, reeves, &c. ... 507
Appeals ... 507
Recognizance in cases of appeal ... 507
Search warrant may be issued by justices in certain cases ... 507
Owner of liquor intended for sale near public roads to be summoned 508
Liquor intended for sale near public works, if seized to be destroyed 509
Payment for liquor sold in contravention of the law to be void ... 509
Witness may be compelled by justice to attend ... 509
Protection of justices ... 510
Costs ... 510, 515
Want of form ... 510
Municipal councils may prohibit the issue of licenses and the sale of intoxicating liquors ... 510
After passage of by-law no liquor to be sold ... 510
Exceptions in favour of manufacturers and merchants ... 511
Who shall prosecute, and before what tribunal ... 512
Limitation of time for prosecuting offenders ... 513
Allegations of complaint ... 513
Proof of passage of by-law ... 514
Several offences by same party ... 514
If defendant fail to appear, justice may proceed *ex parte* ... 514
Amendment of complaint, when may be allowed ... 514
Informality, no prosecution to be dismissed for ... 515
Service of process, &c., by whom to be made ... 515
Depositions may be taken down in writing by justice, &c. ... 515
Proof of date of offence ... 515
Evidence of sale ... 516
Committal of witness for refusing to answer ... 516
Interest no excuse ... 516
Witness bound to answer ... 516
Tampering with witness ... 517
Defendant may be imprisoned ... 517
Absence of defendant ... 517
Imprisonment and liberation ... 518
Application of penalties ... 518
Indemnification of party prosecuting ... 518
Corporation to pay costs of arrest, &c ... 518
No appeal, &c., to court of quarter sessions ... 519
Defect of by-laws ... 520
Obligation of officers ... 520
Presumption of guilt of defendant ... 520





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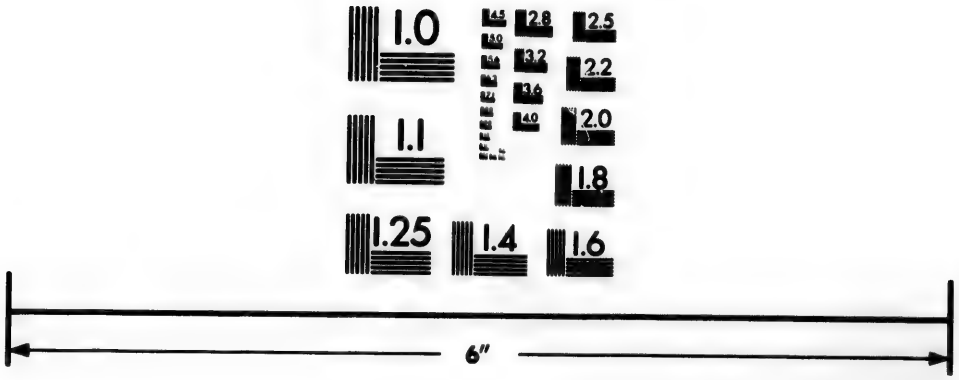

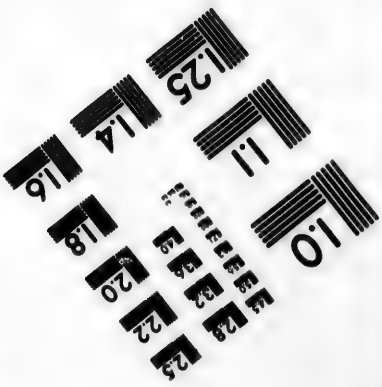

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PAGE

SPIRITUOUS LIQUORS: Justice may summon witness and imprison him if he do not attend 520
Damages against innkeeper in cases of death of drunkard 521
Liability of party furnishing liquor, for assault 521
Notice by husband, wife, &c., not to furnish liquor 522
Notice, form of 523
Payment or compensation for liquor declared void 523
Sales of liquor between Saturday and Monday illegal 523
Officers may enter taverns when authorized 524
Forms to be used in, and limitation as to prosecutions 525
Penalty for selling liquor without license 525
Forms 526–29
STABBING, &c.: Maliciously stabbing, or inflicting other injury 529
Attempts to stab, shoot or wound 529
STAMPS, forgery of post office 415
STATEMENT of the deceased 59
STATUTE OF FRAUDS, comprehends contracts for goods to be delivered at a future time 230
STATUTE Labour 822
STEALING or falsifying election documents 223
Writs, &c., of municipal elections 224
Post-letters 414
Money from post-letters 414
From post-letter bags 414
Printed matter sent by post 416
Keys or locks used for mail 418
See Larceny 347
STEELYARDS and weighing machines, unjust, *see* Weights and Measures 55
STIPENDIARY MAGISTRATE, powers of 49, 100
May act alone 100
To have power to preserve order 100
May enforce execution of process 101
STOCK, forgery of transfers of 277
STOCKHOLDER, false personation of 278
STOLEN GOODS, arrest of persons in possession of 140
Corruptly taking rewards to recover 181
SUBORNATION of perjury 402
SUBPŒNA to witness, form of, under the Fishery Act 270
SUICIDE, *see* Homicide 327
Definition of 530
Attempts to commit 530
SUMMARY CONVICTION, summons in 69, 530
Form of, by a recorder or police magistrate 460
Form of, upon a plea of guilty 460
Proceedings, in cases of, one justice may issue summons, &c 97
As to, *see* Costs 240

PAGE

SUMMARY conviction, appeal in cases of 187
Conviction, what a 198
SUMMONS, or warrant in certain cases, service of.....15, 32
In what cases may issue 27, 97
How to be served 32, 70
Or warrant, no objection allowed for alleged defect in..... 32
If not obeyed, warrant may be issued 36
To a person charged with indictable offence..... 52
To a witness 56, 106
Warrant when the, is disobeyed 53
Justice may issue, when information laid 69
Not obliged in certain cases to issue 70
If not obeyed, Justice may issue warrant 71, 77
If not obeyed, Justice may proceed *ex parte* 72
To defendant, on an information or complaint 103
Warrant, when witness has not obeyed a 107
In indictable offences 27, 530
In summary convictions 69, 530
To defendant, in cases under Fishery Act 270
SUNDAY, what Justice may do on 80
Profanation of, *see* Profanation of Lord's-day 423
Sale of intoxicating liquors prohibited on 523
SUPPORT of illegitimate children 531
Father liable for necessaries 531
Proof as to defendant being the father 531
Affidavit of mother, as to who is the father, to be filed 531
Other remedy not interfered with..... 531
SURETIES, notice of recognizance to be given to accused or defendant and his 63, 126
Form of commitment in default of 127
Form of notice of recognizance to be given to 125
SURETIES of the Peace and good behaviour 126
Complaint by party threatened, for 126
When party may be bound to keep the peace..... 531
Recognizance should be for stated time 532
Form of information 532
Form of warrant 533
Form of recognizance to keep the peace..... 533
Form of discharge of party committed, for want of..... 534
SWANS, geese, ducks, &c., time for killing 302
SWEARING by drivers, &c., on highways, prohibited 321
Profane, punishment for..... 438

T.

TANNERIES, *see* Nuisances 392
TARGETS, butts, damaging of, how p nished 383

PAGE

TAVERNS to be closed during elections ... 228
Number and accommodation of ... 502
Notice of license to be placed over doors of ... 503
Inns, &c., officers may enter when authorized ... 524
Municipal councils may pass by-laws for licensing, &c. ... 503
TAVERN-KEEPERS to have list of prices posted up ... 329
To have no lien on effects of emigrants for more than five dollars ... 330
TELEGRAPH, offences relating to ... 540
What messages entitled to preference ... 540
Operator divulging secrets, a misdemeanor ... 540
Malicious injuries to telegraph works ... 541
How penalties enforced ... 541
TERRITORIAL Division, meaning of ... 101
THREATENING Letters, demanding money or goods by ... 534
THREATS to accuse of crime ... 534
False accusations to extort ... 534
Demanding money or goods by threatening letters ... 534
To accuse of buggery ... 534
To accuse of attempts to commit rape ... 535
TIMBER, above eighteen feet long, not to be floated in certain streams ... 480
Offences relating to ... 535
Cutting, destroying, or stealing trees, &c., a misdemeanor ... 535
Purchasing trees, &c., unlawfully obtained, a misdemeanor ... 535
Not to affect any criminal proceedings ... 536
May be seized for tolls ... 536
List of tolls on ... 536
Malicious injuries to timber-slides, dams, &c. ... 537
Impeding the operations of a company ... 537
Procedure in cases of prosecution ... 537
How fines, &c., recoverable ... 537
Imprisonment, where no goods to satisfy warrant of distress ... 538
Fines, &c., to whom to be paid ... 538
Officers of company may be witnesses ... 538
Limitation of actions ... 538
TIME for payment of costs ... 15
Of sale, in distresses for small penalties ... 211
TIPPLING, &c. on the Lord's-day, prohibited ... 424
TITLE to lands, Justices not to try questions as to, *see* Assault ... 149
TOLLS, regulations as to, *see* Highways ... 307–16
Not to be collected till repairs made ... 311
Penalty for taking before repairs made ... 312
Exemption from ... 312–14
Penalty for non-payment of ... 315
Payment of, how enforced ... 315
Sale of things seized for ... 315
On timber, list of ... 536

PAGE

TOLLS, Timber may be seized for 586
TOLL-GATES, &c., road companies may erect 310
Destroying 374
Destroying, by-laws against 374
TOLL-GATE Keeper not to delay mail 417
Not obliged to give change for more than one dollar..... 312
TRADE Marks, &c., forgery of 285
TRAINS, rate at which railway, may pass through cities, &c. 466
TRANSFERS of stock, forgery of..... 277
TRANSMISSION of papers..... 16
TRANSPORTATION abolished 328
Return from..... 542
Where offender to be tried..... 542
Evidence 542
TRAPPING wild fowl, prohibited..... 302
Deer, prohibited 302
Beaver, muskrat, mink, &c 303
TRAPS used for trapping wild fowl, &c., may be destroyed..... 303
TRAVERSE abolished in cases of misdemeanor 386
TREASON: High treason defined 539
Officer or soldier corresponding with the enemy..... 539
Sentence in high treason 539
Proceedings against persons indicted for high treason..... 539
Persons accused of, not bailable by county judge..... 46
Petit treason abolished 540
TREES, vegetables, &c., stealing, *see* Larceny 352
Vegetables, &c., destroying 371
Cutting, stealing or destroying..... 535
Purchasing, unlawfully obtained..... 535
TRESPASS, *see* Assault..... 146
See Larceny..... 345
See Petty Trespass 404
TRESPASSERS, *see* Assault 146
Petty 404
TRIAL of offenders and accessories in cases of forgery..... 285
By jury, *see* Juvenile Offenders..... 334
TROUT, time for taking salmon 267
Time for taking speckled 267
TRUSTEE, meaning of, in cases of embezzlement 231
Embezzlement by..... 231
Of police villages, offences by 446
TRUTH, justice may commit party if he admit the 84
If not admitted, justice shall proceed..... 84
TUNKERS, Quakers, &c., affirmation by 587
TURKEYS, grouse, &c., time for hunting 301

U.

PAGE

UNDERSTANDING, want of, in witnesses ... 587
UNDUE INFLUENCE, offence of, *see* Violence at Elections ... 157
UNIFORM OF MILITIA ... 382
UNLAWFUL ASSEMBLIES, *see* Riots, &c ... 473
UTTERING FORGED INSTRUMENTS ... 284

V.

VAGABONDS, rogues and, *see* Vagrants ... 548
VAGRANTS: Municipal Councils may pass by-laws respecting ... 548
Who are vagrants, rogues, &c ... 548
Collecting alms, &c., under false pretences ... 549
Desertion of wife and children ... 549
Betting, gaming, &c ... 549
Having in possession unlawful instruments or weapons with felonious intent ... 549
Suspected persons, reputed thieves, &c., liable to arrest ... 549
Idle and disorderly persons, such as unlicensed pedlars, prostitutes, &c ... 549
Constables may apprehend rogues, &c ... 550
Punishment of rogues, vagabonds, &c ... 550
General penalty for neglect of duty, &c ... 550
VALID, forms of schedule to be ... 102
VARIANCE between information and evidence ... 14
Between warrant and evidence ... 15
If, in summons or warrant appear to justices, they may adjourn the case ... 33
If, in warrant, may adjourn the case ... 34
As to any, between information and facts or evidence ... 78
If material, justice may adjourn the case ... 79
VEGETABLES, plants, &c., maliciously injuring or destroying ... 371
VEHICLES, hiring at elections ... 571
Loaded, meeting on highways ... 321
Vessels, &c., intended for military expeditions, &c., against foreign countries ... 578, 579
VENUE in cases of forgery ... 289
VERBAL or written agreements between masters and servants ... 578
VESSELS, stealing from wrecked, *see* Larceny ... 349
Offences relating to ... 550
Assisting to land smuggled goods, forfeiture of ... 496
Hovering in British waters may be boarded by officer of customs ... 496
Wilfully or maliciously firing at ... 500
Destroying goods, custom houses, &c., *see* Smuggling ... 500
Vehicles, &c., intended for military expeditions, &c., against foreign countries ... 578, 579
VEXATIOUS ACTIONS: Against Justices of the Peace ... 512

PAGE

VEXATIOUS ACTIONS: When Justice has exceeded his jurisdiction 542
Acts done under conviction or order..... 543
If one Justice convict and another grant a warrant 543
If a Justice refuse to perform his duty 544
No action to be brought against Justice after conviction affirmed.... 544
Actions brought contrary to law 546
Limitation of actions 544
Notice of actions 545
Action not to be brought in county or division court, if Justice objects 545
Non-suit in certain cases 546, 547
The act to apply to every officer 546
Vexatious indictments for misdemeanor..... 546
Recognizance to be given by Justice in certain cases 546
Costs 547
VICTUALLING HOUSES 356
VIOLENCE at elections..... 157
VISITORS of private lunatic asylums, Justices may appoint..... 363
VOLUNTARY Contracts, *see* masters and servants, offences by..... 572
VOLUNTEER force may be called out to quell riot..... 476
Militia, Governor may raise 382
Militia, uniform of 382
Militia, persons buying uniform of 383
Militia, damaging targets, &c. 383
VOLUNTEERS, how value of property destroyed by, may be ascertained..... 382
VOTE, penalty for fraudulently conveying lands in order to give a 220
VOTER, bribery by a 156
VOTERS for school trustees, challenging 484
For school trustees, declaration of 484, 488
For school trustees, penalty for false declaration 484

W.

WAGES, non-payment of, *see* Masters and Servants, offences by..... 576
WAREHOUSEMEN, fraudulent receipts by..... 282
WARRANT: Of distress, justice to issue in cases where pecuniary penalty is imposed, &c..... 91
Where issuing of, would be ruinous, committal instead..... 92
Of distress, when issued defendant may be bailed 92, 93
In case of appeal against conviction justice may issue..... 95
In cases of summary proceedings justice may issue..... 97
Of distress, one justice may issue..... 97
When the summons is disobeyed..... 103
In the first instance..... 104
Of committal for safe custody, &c 104
Where witness has not obeyed a summons..... 107
For a witness in the first instance..... 107

PAGE

WARRANT: To remand a defendant when apprehended 108
Of distress upon conviction for a penalty 114
Of distress upon an order for the payment of money 115
Of distress, endorsement in backing a 116
Of distress, constable's return to a 116
Of commitment for want of distress 117, 120
Of commitment on an order in the first instance 118
Of distress for costs upon an order for dismissal of 119
Of distress for costs of an appeal, &c. 121
Of commitment in want of distress for costs of an appeal 122
When a constable may arrest without a 140
Of distress, *see* Assault 148
Return of, *see* Distresses for small Penalties 214
Endorsement of, how performed 74
Endorsement of, its effects 74
Need not be returnable at any particular time 73
By whom may be executed 73
Directions as to procedure 7
Want of form in 74
Search 31
Form of 54
Form of information to obtain a 53
Form of, where illegal brewing, &c., is suspected 243
Bench 30
After indictment 28
To apprehend, to be under seal 33
For what offences granted 27
May be issued on Sunday 30
May remain in force till executed 33
How and when may be executed 33
On what conditions constables may execute 34
No objection allowed for defect in form or substance 31, 32, 34, 74
If variance misleads defendant 34
Or summons may issue in the first instance 31
In certain cases may issue in the first instance 36
May be issued if summons not obeyed 32, 36, 53
Backing a 56
Of deliverance, Justice may issue, in certain cases 46
To apprehend a person indicted 55
Of commitment of a person indicted 55
Of commitment of a person indicted for trial 67
To detain a person indicted 56
To detain a person in custody 56
When witness has not obeyed a summons 57, 77
For a witness in the first instance 57, 77
In case of indictable offence 52

	PAGE
WARRANT: When the summons is disobeyed	53
Of commitment of witness for refusing to be sworn or to give evidence	58, 77
Remanding a prisoner	62
To convey accused to county where offence was committed	64
Judge may issue, if summons not obeyed	71
To be under hand and seal of Justice	72
To apprehend a party required to be bound to keep the peace, form of	583
Of attachment against absconding debtor	558
Of commitment under Fishery Act	271
Of commitment under Foreign Enlistment Act	571
WATER FENCES, *see* Fences	253
WEAPONS, Justice may take, from persons attending public meetings	442
When taken from persons at public meetings, may be returned	443
Justice not liable for, taken from persons at public meetings, if lost	443
Possessing arms or, near public works, *see* Riots, &c.	478
Delivery of, to Justice, &c., *see* Riots near Public Works	479
Seizure of, by Justice, &c., " "	479
Penalty for concealing, " "	479
Arrest of persons carrying, " "	480
Carrying concealed	551
Having in possession, with felonious intent	549
See Outrages on the Frontier	582
WEEDS, preventing growth of	552
WEIGHING machines, *see* Weights and Measures	552–5
WEIGHTS, standard, of different kinds of grain	553
WEIGHTS AND MEASURES, using unlawful	552
Standard	553
Penalty for using unlawful	553
Inspector may enter shops, &c	553
Forfeitures of unstamped and unjust	553
False steelyards, weighing machines, &c	553
When penalty incurred, and how recoverable	554
Forging or selling forged stamps for marking	554
Penalty on inspector for improperly stamping	555
Appeals	555
Jurisdiction of municipal councils	555
WHITE-FISH, as to taking of	269
WIFE, a man cannot commit rape on his own	448
Desertion of, and children, *see* Vagrants	549
Husband and, *see* Larceny	342
Notice by, not to furnish husband with liquor	522
WILD-FOWL, trapping of	302
WILLS, stealing of, *see* Larceny	348
WITNESS: Officers, &c., of road companies in actions by or against company	320

PAGE

WITNESS: Attendance of, in cases against juvenile offenders 336
Who may be, in offences relating to the post office 420
Fees to 204
Summons to 106
Warrant where summons is discharged 107
Warrant for, in first instance 107
Commitment of, for refusing to be sworn or to give evidence 108
Party ravished is an admissible, in cases of rape 447
In cases under liquor laws, may be compelled to attend 509
In cases under liquor laws, bound to answer 516
In cases under liquor laws, may be committed if he refuses to answer 516
In cases under liquor laws, tampering with 517
General power of Justice to compel attendance of 585
Competency of 586
See Evidence 585–94
WITNESS'S name, forgery of 278
WOLVES: Destruction of 555
Certificate to be given by Justice 556
When treasurer to pay 556
If not paid by treasurer 556
WOMEN, who to enter into recognizance for married 583
As to the responsibility of, for crimes 470
WOODCOCK, time for killing 302
WORKHOUSES, cities and towns may establish 294
WORSHIP, disturbance of public 216
WOUNDING, stabbing, shooting, &c, maliciously 529
WRITS, &c., of municipal elections, stealing 224

PAGE
..... 836
..... 420
..... 204
..... 106
..... 107
..... 107
..... 108
..... 447
..... 509
..... 516
swer 516
..... 517
..... 585
..... 586
.. 585–94
..... 278
..... 555
..... 556
..... 556
..... 556
..... 583
..... 470
..... 802
..... 294
..... 216
..... 529
..... 224